

# Appendix F

## DoD Environmental Policies and Guidance

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For additional useful information, visit the DoD Environmental Security website at:

*<http://www.dtic.mil/envirodod/envbrac.html>*

# **Doll Guidance and Policies on Fast Track Cleanup at Closing Installations [18 May 1996]**

## **Guidance and Policies on Fast Track Cleanup at Closing Installations**

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THE DEPUTY SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301-1000

MEMORANDUM FOR THE SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
ASSISTANT SECRETARIES OF DEFENSE  
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE  
ASSISTANTS TO THE SECRETARY OF DEFENSE  
DIRECTOR, ADMINISTRATION AND MANAGEMENT  
DIRECTOR, DEFENSE LOGISTICS AGENCY

SUBJECT: Fast Track Cleanup at Closing Installations

The President announced on July 2, 1993, a base closure community reinvestment program directed at the revitalization of local communities affected by base realignment and closure (**BRAC**) actions through economic and fast track cleanup initiatives. The Fast Track Cleanup policy memorandum was issued on September 9, 1993. It included procedures for establishing cleanup teams and conducting comprehensive “bottom up” reviews **of** cleanup plans and schedules at closing installations; accelerating the National Environmental Policy Act process; involving the public; determining environmental suitability to lease; and implementing the Community Environmental Response Facilitation Act for identification of uncontaminated properties.

Based on the success the Department has had with the Fast Tract Cleanup program at installations in previous base closure rounds, the program is being extended to bases selected for closure or realignment in 1995. To implement Fast Track Cleanup at these locations and continue the program at bases in the previous closure rounds, the following Fast Track Cleanup policies are **being** reissued with modifications:

- . DoD Guidance on Establishing Base Realignment and Closure Cleanup Teams
- DoD Guidance on Accelerating the NEPA Analysis Process for Base Disposal Decisions
- DoD Guidance on Improving Public Involvement in Environmental Cleanup at Closing Bases
- DoD Policy on the Environmental Review Process to Reach a Finding of Suitability to Lease
- DoD Policy on the Implementation of the Community Environmental Response Facilitation Act

Components should refer to the joint DoD/Environmental Protection Agency (EPA) Restoration Advisory Board (**RAB**) Implementation Guidelines, issued September 27, 1994, for additional assistance in establishing RABs at BRAC Installations.

The bottom up reviews and cleanup plans discussed in the attached DoD Guidance on Establishing Base Realignment and Closure Cleanup Teams, and described in the DoD BRAC Cleanup Plan (**BCP**) Guidebook (Fall 1995 edition), must be completed by November 1, 1996, for each closing or realigning installation identified through BRAC actions in 1995, where a BRAC Cleanup Team (**BCT**) has been established. A BCP Abstract **shall** be submitted to the Under Secretary of Defense (Acquisition & Technology) no later than November 29, 1996, and annually thereafter, for all installations in each of the four BRAC rounds (1988, 1991, 1993, and 1995), where a BCT has been established.

The Department’s best efforts are critical to communities successfully **transitioning** from base closure to economic recovery through economic redevelopment. I ask for your personal support and urge you to give this initiative continual, high level management attention and to allocate the resources necessary to help insure success.

Attachments

## DOD GUIDANCE ON ESTABLISHING BASE REALIGNMENT AND CLOSURE CLEANUP TEAMS

### I. PURPOSE

This guidance implements the President's plan to expedite the disposal and reuse of closing military bases by creating **partnerships** and accelerating environmental cleanup activities. It establishes a Base Realignment and Closure (BRAC) Cleanup Team (**BCT**) for each Department of Defense (DoD) closing or realigning base where property is available for transfer to the community and empowers the team with the authority, responsibility, and accountability for environmental cleanup programs at these installations, emphasizing those actions which are necessary to facilitate reuse and redevelopment.

### II. APPLICABILITY AND SCOPE

This policy applies to all DoD installations slated for closure or realignment where property is available for transfer to the community pursuant to the Base Closure and Realignment Act of 1988 (**P.L. 100526**) (**BRAC 88**) or the Defense Base Closure and Realignment Act of 1990 (**P.L. 101-510**) (**BRAC 91,93, and 95**). The policy's scope includes environmental cleanup programs and activities that support the lease or transfer of real property at affected installations under applicable statutes, **regulations**, and authorities, including but not limited to the following:

- Comprehensive Environmental Response, Compensation and Liability Act (**CERCLA**)  
Resource Conservation and Recovery Act (**RCRA**)  
National Environmental Policy Act (**NEPA**)  
Executive Order 12580, Superfund Implementation  
Community Environmental Response Facilitation Act (**CERFA**)  
National Contingency Plan (**NCP**)  
Defense Environmental Restoration Program (**DERP**)

The requirements of this policy shall in no way impede, or otherwise affect the continuing responsibility to achieve and maintain environmental compliance in the ongoing operation of installation facilities.

### III. POLICY

Department of Defense policy is to conduct environmental cleanup actions and programs to protect human health and the environment and to facilitate the reuse and redevelopment of closure bases as expeditiously as possible. This policy will be carried out to promote economic reuse of affected installations in support of their surrounding communities, while satisfying applicable environmental protection laws and regulations.

### IV. PROCEDURES AND RESPONSIBILITIES

#### A. PROCEDURES

1. In conjunction with the appropriate Environmental Protection Agency (EPA) Regional Office and state environmental regulatory entity, every DoD installation slated for closure or realignment at which property will be available for transfer to the community shall form a BCT comprised of one representative from DoD, one representative from the state and, where appropriate, one representative from the U.S. EPA. The BCT **will** act as the primary forum in which issues affecting the execution of cleanup to facilitate reuse will be addressed. One BCT may be formed to oversee activities at more than one installation in the same geographic area.

2. The BCT will coordinate closely with the Base Transition Coordinator (**BTC**) and Local Redevelopment Authority (**LRA**) in developing and implementing a cleanup program which facilitates redevelopment of excess property.
3. The DoD representative on the BCT (to be known as the BRAC Environmental Coordinator (**BEC**)) will be appointed by the appropriate DoD Component responsible for the installation. The BEC appointed for each base will work for and within the DoD Component organization and will have the responsibilities and implementation authorities for environmental cleanup programs related to the transfer of the installation's real property. The BEC shall have experience commensurate with the responsibilities of the position. The regulatory entities have been requested to provide members to the BCT of comparable experience who will possess the requisite authority from their respective organizations to take the actions stipulated in this policy.
4. **The** BEC, in conjunction with other members of the BCT, will conduct a "Bottom Up" review of the environmental program. The "Bottom Up" review will include an evaluation of the existing environmental programs such as the Installation Restoration Program, Closure Related Compliance Program, and the Asbestos Program to identify opportunities for acceleration to expedite conveyance of property. Potential areas for acceleration include, but are not limited to:
  - a. Review of selected technology for application of expedited solutions.
  - b. Embracing a bias for cleanup instead of studies, such as the implementation of immediate removal actions to eliminate "hot spots" while investigation continues.
  - c. Identification of clean **properties**.
  - d. Identification of overlapping phases of the cleanup process.
  - e. Use of improved contracting procedures.
  - f. Interfacing with the community reuse plan and schedule.
  - g. Validation of technology of the proposed remedy selection to ensure conformance with Fast Track Cleanup objectives.
  - h. Identification of opportunities for application of presumptive remedies.
  - i. Using innovative management, coordination and communication techniques (e.g., partnering).

The product of this review will be a BRAC Cleanup Plan (**BCP**) which will be the road map for expeditious cleanup necessary to facilitate conveyance of property to communities for redevelopment. The BCP will be a phased plan which encapsulates and prioritizes requirements, schedules and cost of the environmental programs to be implemented by the BCT for completing environmental action in support of the cleanup, reuse and redevelopment of the base. For sites with existing Federal Facility Agreements (**FFA**), Interagency Agreements (**IAG**), or similar cleanup agreements, orders or decrees, the BEC will propose and negotiate changes needed to expedite cleanup.

### B. RESPONSIBILITIES

1. For the purposes of carrying out this policy, the Secretaries of **the** Military Departments and the Director of the Defense Logistics Agency, through their organizations, shall be responsible for:
  - a. Delegating to the BEC, to the extent permitted by applicable law, authority and responsibility for the execution of all environmental cleanup programs related to the transfer of the base or parcels within a BCP.
  - b. Ensuring that all BECS are adequately trained to execute their responsibilities.
  - c. Making the resources (e.g., technical expertise, contracting, legal, financial) available to the BEC for executing the cleanup programs.
  - d. Forwarding the BCP Abstracts to USD(A&T) on November 29, 1996 and annually, thereafter.
  - e. Programming and budgeting for the resources required to execute the BCP.
  - f. Providing implementing instructions for this guidance.
  - g. Providing oversight of the BEC's actions.
2. The responsibilities of the BEC shall include:
  - a. Contacting the appropriate U.S. EPA Regional Office and state environmental regulatory agency and forming the BCT.
  - b. In conjunction with the other members of the BCT, conducting a "Bottom-Up" review of the environmental cleanup programs.
  - c. Implementing all environmental cleanup programs related to closure in an expeditious and cost effective manner in accordance with the BCP.
  - d. Negotiating appropriate cleanup and abatement actions with EPA and state BCT members.
  - e. Identifying resource requirements for cleanup and abatement actions.
  - f. Acting as the liaison/coordinator with appropriate installation and headquarters commanders with regard to closure-related environmental compliance matters.
  - g. Participating, in conjunction with other BCT members, as a member of the community's Restoration Advisory Board (**RAB**) and coordinating with the Base Transition Coordinator and Local Redevelopment Authority on environmental matters affecting the leasing or conveyance of property (e.g., integrating cleanup schedules and reuse priorities, cleanup actions **and** levels, reports to community leaders on cleanup **progress** and/or possible impediments to a lease or conveyance).
  - h. Providing direction on the use of BRAC environmental funds to accomplish cleanup and abatement actions within resources available.

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- i. Proposing and executing changes to existing cleanup agreements, orders and decrees, and other environmental procedures to achieve timely and cost effective cleanup.
- j. Serving as the Program Manager or the Remedial Program Manager where the installation has an FFA, IAG, or other regulatory cleanup agreement, order or decree.
- k. Signing or obtaining signature of the Record of Decision for cleanup actions under CERCLA.
- l. Signing or obtaining signature on decision documents for corrective actions related to cleanup under RCRA once the operational mission has departed, and removal actions under CERCLA.
- m. Signing or obtaining signature on decision documents for corrective actions related to cleanup under applicable state laws, regulations and programs.
- n. Signing the installation's Environmental Baseline Survey.
- o. Signing uncontaminated parcel determinations under CERFA.
- p. Providing input to the Finding of Suitability to Lease (FOSL) and Finding Of Suitability to Transfer (FOST).
- q. Establishing and maintaining the Administrative Record and Participation Procedures required under CERCLA **and** administrative records of all actions taken with regard to the cleanup of the installation.
- r. Maintaining art awareness of the status of site activities and intervening as warranted to ensure expeditious project completions.
- s. Maintain involvement in the National Environmental Policy Act (NEPA) process for the installation to ensure coordination with the cleanup process.
- t. **Certifying** construction requested by lessee will not interfere with the environmental cleanup program.

## V. ISSUES RESOLUTION

Issues affecting the execution of environmental cleanup programs should be resolved at the BCT level. For sites with existing FFAs, **IAGs**, or other agreements, orders, or decrees, issues which cannot be resolved by the BCT will be handled in accordance with existing dispute resolution procedures. For sites covered under the Defense - State Memorandum of Agreement (**DSMOA**) program without other agreements, orders, or decrees in place, disagreements will be resolved through the Dispute Resolution provision in the DSMOA. Where disputes arise at sites without any dispute resolution procedures in place, resolution will be made at the Component Deputy Assistant Secretary level.



## DoD GUIDANCE ON ACCELERATING THE NEPA ANALYSIS PROCESS FOR BASE DISPOSAL DECISIONS

### I. PURPOSE

This guidance implements the President's plan to expedite the disposal of closing military bases by directing that all documents required by the National Environmental Policy Act (NEPA) of 1969 be completed, to the extent practicable, within 12 months of receipt of a Local Redevelopment Authority's (LRA) final reuse plan. It requires expedited production of an early, high-quality environmental analysis which will be **useful** in the LRA's ongoing planning efforts as well as in the Department of Defense (DoD) Component's property disposal decision making, thus expediting Component disposal decisions, the productive reuse of the property, and the economic redevelopment of the community. This analysis may also be used to support DoD Component decisions on interim outleaping of parcels for early reuse and other actions supporting conversion of the installation to civilian reuse.

### II. APPLICABILITY AND SCOPE

This policy applies to all DoD installations being closed or realigned pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (BRAC 88), P.L. 100-526, or the Defense Base Closure and Realignment Act of 1990 (DBCRA), P.L. 101-510, as amended. The policy's scope includes all environmental analyses required under NEPA to support DoD Component decisions on disposition of BRAC property.

### III. POLICY

It is DoD policy that DoD Components responsible for making decisions on disposal and reuse of installations pursuant to the Base Closure statutes will implement measures to assure that all environmental analyses required by NEPA be completed, to the extent practicable, within 12 months of the date the LRA involved submits its final reuse plan. Except in exceptional circumstances, a single NEPA analysis will be prepared to support decisions regarding **disposal** alternatives and probable reuse of the installation.

### IV. PROCEDURES AND RESPONSIBILITIES

#### A. Procedures

1. Every effort should be made by the DoD Office of Economic Adjustment (OEA) and the DoD Components to aid and encourage the LRA to arrive at a "final" suitable reuse plan at an early stage. An LRA's reuse plan is considered "final" when officially adopted by the **LRA**.
2. The LRA's reuse plan, if available and to the extent legally permissible, will be a **primary** factor in the development of the proposed action, reasonable alternatives, and effects analysis in the DoD Component's NEPA process for the disposal action. Using the reuse plan in this manner will meet the requirement of law that the reuse plan be treated as part of the proposed federal action. The DoD Component **will** alert the **LRA** to potential environmental problems and cooperatively seek any necessary modification to the reuse plan. The DoD Component's obligation under NEPA is to evaluate the proposed action and reasonable alternatives for the disposal and reuse of BRAC property.
3. Where an EIS is required, DoD Components will assure that the formal EIS process is initiated so that it can be completed consistent with the timetable developed for property disposal. Gathering data and conducting background analysis for the likely disposal scenarios for the property should begin **as** early as possible.

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This early data development should be combined with other ongoing processes supporting property disposal actions, such as the preparation of Environmental Baseline Surveys. Likewise, other environmental studies undertaken to support the EIS process, such as those regarding wetlands determinations, threatened and endangered species, and cultural or historic resources, should be commenced at this early stage to assure timely compliance with the applicable regulatory requirements,

4. Advance data development could begin even before the publication in the Federal Register of the Notice of Intent (NOI) to produce the EIS. This advance data development will require allocation of sufficient staff, contracting support, and other necessary resources.
5. Data development will continue after publication of the NOI in the Federal Register and will be conducted with the participation of the LRA and other appropriate agencies. Data developed in the early stages of the NEPA process will be provided to the LRA to aid in finalization of its reuse plan.
6. In the event that the LRA does not submit a reuse plan by the time the DoD Component needs to initiate the NEPA analysis necessary to support a disposition decision for the property, the DoD Component will begin preparation of its NEPA analysis using reasonable assumptions as to the likely reuse scenario and its reasonable alternatives.

Reuse assumptions may be based upon such factors as the DoD component's evaluation of the highest and best use of the property; existing use of the facilities; local zoning; specific proposals or plans for the reuse of all or parts of the installation; limitations based on environmental factors such as contamination, cultural and historic resources, wetlands, endangered species; results of the Federal agencies' screening process; proposals from public **benefit** transfer applicants or sponsoring agencies; and prior experience in disposal and reuse actions at similar installations.

7. If no final reuse plan is submitted by the LRA before the final NEPA document is completed, the DoD Component will complete its NEPA process and issue a Finding of No Significant Impact (**FONSI**) or Record of Decision (**ROD**) in the absence of a final reuse plan. In the event that a final reuse plan is submitted after the **FONSI** or **ROD** but prior to transfer of title to the property, the DoD Component will determine whether the environmental impacts of the land uses identified in the reuse plan are adequately addressed in the completed NEPA document.

Where those impacts are adequately addressed, the DoD component need take no further action under **NEPA**. Where those impacts are not adequately addressed, the DoD component will prepare any additional analysis required to comply with law or regulation.

8. To the greatest extent practicable, DoD Components shall ensure that all NEPA documentation prepared in support of disposal decisions includes an analysis of whether the disposal and reuse result in any disproportionately high and adverse human health and environmental effects on minority and low income populations. This requirement is in accordance with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations."

### B. Responsibilities

The Secretaries of the Military Departments and Director of the Defense Logistics Agency, through their organizations, shall be responsible for:

1. Delegating authority and responsibility to the lowest level(s) to achieve timely, effective NEPA analyses.
2. Ensuring **sufficient** resources are available to initiate and complete the NEPA analysis,

3. Ensuring DoD Base Transition Coordinators (**BTC**) and BRAC Environmental Coordinators (**BEC**) are involved in the NEPA analysis process for their installations.
- 4.** Establishing adequate procedures to provide information on the NEPA analysis process and actions so as to permit meaningful community and public participation in the process.

**DOD GUIDANCE ON IMPROVING PUBLIC  
INVOLVEMENT IN ENVIRONMENTAL  
CLEANUP AT CLOSING BASES**

**I. PURPOSE**

This guidance implements the President's plan to expedite the closure and reuse of closing military bases. This guidance directs the Components to involve the community near a closing base in the cleanup program by making information available, providing opportunities for comment, and establishing and seeking public participation on a Restoration Advisory Board (**RAB**).

**II. APPLICABILITY AND SCOPE**

This guidance applies to all Department of Defense (DoD) bases being closed or realigned pursuant to the Base Closure and Realignment Act of 1988 (**P.L. 100-526**) (**BRAC 88**) or the Defense Base Closure and Realignment Act of 1990 (**P.L. 101-510**) (**BRAC 91, 93 and 95**) and where property will be **available** for transfer to the community. The policy explains DoD intent in establishment of RABs, fundamental responsibilities of the RAB, and procedures for the RAB.

**III. POLICY**

It is DoD policy to:

- A. Be open, cooperative and forthright with the public concerning environmental cleanup activities and to make information on program activities available in a timely manner.
- B. Provide opportunities for and encourage public comment on documents and proposed activities and to be responsive to comments.
- C. Establish a RAB at closing and realigning bases where property will be available for transfer to the community. The RAB will work in partnership with the Base Realignment and Closure (**BRAC**) Cleanup Team (**BCT**) on cleanup issues and related matters. Through the **RAB**, stakeholders may review progress and provide input to the decision making process. BRAC installations not transferring property to the community should follow the same guidelines for establishing **RABs** as operational bases.

**IV. PROCEDURES AND RESPONSIBILITIES**

**A. PROCEDURES**

- 1. ARAB will be established at each closing and realigning base where property will be available for transfer to the community. The RAB will:
  - a. be comprised of DoD Component, United States Environmental Protection Agency (EPA) and state representatives and members of the **local** community;
  - b. be jointly chaired by a DoD Component representative (the BRAC Environmental Coordinator [**BEC**]) and a member of the local community;
  - c. meet the requirements of 10 USC Section 2705 (c), Department of Defense Environmental Restoration Program, which directs DoD to establish Technical Review Committees (**TRC**). Where TRCS or other similar groups already exist, they shall be expanded or modified to become **RABs**, rather than creating a separate **committee**.

2. The DoD Components will seek to include on the RAB members who **eflect** diverse interests within the community (e.g. the **Local** Redevelopment Authority, representatives of citizen, environmental and public interest groups; local government and individual community members). The membership selection process will be conducted in a fair and open manner, ideally by a community selection panel. The DoD Components should accept the panels nominations unless it determines that the nominees would not reflect the full range of views within the community.
3. A point-of-contact for cleanup information shall be identified at the installation level (normally the **BEC**). A second point-of-contact (e.g., at higher headquarters) to resolve problems in obtaining information shall also be identified.
4. Information on cleanup activities, such as draft and final technical documents, proposed and final plans, status reports, etc., will be provided to the RAB and made available to the public in a timely manner. Public comments will be actively solicited and considered before documents are finalized.
5. Vehicles for disseminating information such as public meetings, bulletins, and central repositories shall be identified and used consistently.

## B. RESPONSIBILITIES

1. The DoD Components shall:
  - a. Ensure that the policies stated in this memorandum are implemented by their respective organizations;
  - b. Ensure that administrative support is available to establish RABs and conduct public outreach;
  - c. Conduct oversight of public outreach activities.
  - d. Ensure that
    - i. community relations plans are developed or revised to reflect these policies;
    - ii. **RABs are** established expeditiously and that their inputs are fully considered in decision **making** in the cleanup program; and
    - iii. installation public affairs staff are involved in public outreach activities of the cleanup program.
2. The RAB will:
  - a. act as a forum for discussion and exchange of cleanup information between Government agencies and the public;
  - b. conduct regular meetings, open to the public, at convenient times;
  - c. keep meeting minutes and make them available to the public;
  - d. develop and maintain a mailing list of names and addresses of stakeholders who wish to receive information on the cleanup program;
  - e. review and evaluate documents;

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- f. identify project requirements;
- g. recommend priorities among sites or projects;
- h. identify applicable standards and, consistent with Section 121 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), propose remedies consistent with planned land use.

**DOD POLICY ON THE ENVIRONMENTAL  
REVIEW PROCESS TO REACH A  
FINDING OF SUITABILITY TO LEASE (FOSL)**

**I. PURPOSE**

This policy provides guidance to Department of Defense (DoD) Components on the process to identify and document parcels of real property made available through the Base Realignment and Closure (**BRAC**) process and which are environmentally suitable for outlease. The DoD Components may develop implementing procedures containing additional requirements based on their own specific organizational needs and unique requirements but which will, at a minimum, include, but not conflict with, the following documentation and procedures.

**II. APPLICABILITY AND SCOPE**

This policy applies to all DoD installations slated for closure or realignment pursuant to the Base Closure and Realignment Act Of 1988 (P.L. 100-526) (**BRAC 88**) or the Defense Base Closure and Realignment Act of 1990 (P.L. 101-510) (**BRAC 91,93, and 95**) and on which property is being considered for **outlease**. This policy is effective immediately. The procedures contained in this policy are not required for easements licenses and permits for use of real property, unless deemed necessary by the DoD Component. Nothing in this policy affects any requirement to comply with the National Environmental Policy Act (**NEPA**). The policy meets the following objectives:

- A. Ensure protection of human health and the environment.
- B. Develop a DoD-wide process to assess, determine and document the environmental suitability of properties (parcels) for **outlease**.
- C. Ensure outleases of properties do not interfere with environmental restoration schedules and activities being conducted under the provisions of law or regulatory **agreements**.
- D. Ensure compliance with **all** applicable environmental requirements and establish the basis for the DoD Components to make notifications to lessees regarding hazardous substances (including asbestos and **any** substance regulated under CERCLA, **RCRA** or state law) and petroleum products (including their derivatives, such as aviation fuel and motor oil) potentially on the property.
- E. Provide adequate public and regulatory participation.

**III. POLICY**

**A. Requirement for Assessment, Determination and Documentation of Properties Suitable for Outlease**

In the case of real property to which this policy applies, the head of the DoD Component with accountability over the property, or his/her designated representative, shall assess, determine and document when properties are suitable for outleasing. This assessment and determination will be based on an Environmental Baseline Survey (**EBS**) and will be documented in a Finding of Suitability to Lease (**FOSL**) as described below.

**B. Investigation**

- 1. Environmental Baseline Survey (**EBS**). An EBS will be prepared encompassing any parcel to be **outleased**. The EBS will be based on all existing environmental information related to storage, release, treatment or disposal of hazardous substances or petroleum products on the property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any

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hazardous substance or petroleum product. In certain cases, additional data, including sampling and analysis, may be needed in the EBS to support the FOSL determination.

A previously conducted EBS may be updated as necessary and used for making a FOSL determination, where appropriate. An EBS also may satisfy other environmental requirements (e.g., to reach a Finding of Suitability to Transfer [FOST] or meet the uncontaminated parcel identification requirements of the Community Environmental Response Facilitation Act [CERFA]).

2. Procedures for Conducting an EBS. The EBS will consider all sources of available information concerning environmentally significant current and past uses of the real property and shall, at a minimum, consist of the following:
  - a. Detailed search and review of available information and records in the possession of the DoD Components and records made available by the regulatory agencies or other involved Federal agencies, **DoD Components are responsible** for requesting and **making** reasonable inquiry into the existence and availability of relevant information and records to include any additional study information (e.g., surveys for asbestos, radon, lead-based paint, transformers containing PCB, Resource Conservation and Recovery Act Facility Assessments and Investigations [RFA and RFI]) to determine what, if any, hazardous substances or petroleum products maybe present on the property.
  - b. Review of all reasonably obtainable Federal, state, and local government records for each adjacent facility where there has been a release of any hazardous substance or any petroleum product, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product on the real property.
  - c. Analysis of aerial photographs that may reflect prior uses of the property which are in the possession of the Federal Government or are reasonably obtainable through state or local government agencies.
  - d. Interviews with current **and/or** former employees involved in operations on the real property.
  - e. Visual inspections of the real property; any buildings, structures, equipment, pipe, pipeline, or other improvements on the real property; and of properties immediately adjacent to the real property, **noting** sewer lines, runoff patterns, evidence of environmental impacts (e.g., stained soil, stressed vegetation, dead or ill wildlife) and other observations which indicate actual or potential release of hazardous substances or petroleum products.
  - f. Identification of sources of contamination on the installation and on adjacent **properties** which could migrate to the parcel during the lease term.
  - g. **Ongoing response** actions or actions that **have been taken** at or adjacent to the parcel.
  - h. A physical inspection of property adjacent to the real property, to the extent permitted by owners or operators of such property.
  - i. Sampling, if the circumstances deem appropriate.

Note: For the purposes of **paragraphs** b, e, f, **g**, & h above, “adjacent properties” should be defined as either those properties contiguous to the boundaries of the property being surveyed or other nearby properties. In either case, the survey should be addressed to those portions of the properties relatively near the installation that would pose significant environmental concern **and/or** have a significant impact on the results of the EBS.



3. Documentation of an EBS. At the completion of the EBS, a report will be prepared which will include the following:
- a. An Executive Summary briefly stating the areas of real property (or parcels) evaluated and the conclusions of the survey.
  - b. The property identification (e.g., address, assessor parcel number, legal description).
  - c. Any relevant information obtained from a detailed search of Federal Government records pertaining to the property, including available maps.
  - d. Any relevant information obtained from a review of the recorded chain of title documents regarding the real property. The review should address those prior ownerships/uses that could reasonably have contributed to an environmental concern, and, at a minimum, cover the preceding 60 years.
  - e. A description of past and current activities, including **all** past and current DoD and **non-DoD** uses to the extent such information is reasonably available, on the property and on adjacent properties.
  - f. A description of hazardous substances or petroleum products management practices (to include storage, release, treatment or disposal) at the property and at adjacent properties.
  - g. Any relevant information obtained from records reviews and visual and physical inspections of adjacent properties.
  - h. Description of ongoing response actions or actions that have been taken at or adjacent to the property.
  - i. An evaluation of the environmental suitability of the property for lease for the intended purpose, if known, including the basis for the determination of such suitability.
  - j. Reference to key documents examined (e.g., aerial photographs, spill incident reports, investigation results). (The documents will be made available by DoD upon request to DoD.)

#### C. Finding of Suitability to Lease (FOSL)

After completion and review of the EBS and any appropriate local community reuse plans, the DoD Component **Official** will sign a FOSL once a determination that the property is suitable to lease for the intended purpose has been made based on one of the following:

1. Hazardous substance notice need not be given because no hazardous substances or petroleum products were stored for one year or more, known to have been released, treated or disposed of on the parcel;
2. Hazardous substance notice will be given of the type and quantity of hazardous substances or petroleum products, and the time at which storage for one year or more, release, treatment or disposal took place, but the property is not now contaminated with hazardous substances or petroleum products (e.g., storage for one year or more but no release, a release has occurred but no response action is required, or a response action has been completed); or
3. The property contains some level of contamination by hazardous substances or petroleum products, **and** hazardous substance notice, will be given the type and quantity of such hazardous substances or petroleum products, and the time at which storage for one year or more, release, treatment or disposal took place. However, this property can be used pursuant to the proposed **lease**, with the specified use restrictions in the lease, with acceptable risk to human health or the environment and without interference with the environmental restoration process. (The specific lease **restrictions** on the use of

the parcel to protect human health and the environment and the environmental restoration process will be listed in the FOSL.)

### IV. PROCEDURES AND RESPONSIBILITIES

- A. Regulatory agencies will be notified at the initiation of the EBS and the FOSL. The process of development of these documents will be designed to assure that regulators are provided adequate opportunity to express their views. Regulators will be provided with workable draft documents as they become available.

Regulatory comments received during the development of these documents will be reviewed and incorporated as appropriate. Any unresolved regulatory comments will be included as attachments to the EBS or the FOSL.

- B. As required by CERCLA Section 120(h)(5), DoD shall notify the state prior to entering into any lease that will encumber the property beyond the date of termination of DoD's operations. These notifications shall include the length of lease, the name of lessee, and a description of the uses that will be allowed under the lease of the property. At National Priorities List (NPL) sites, DoD shall provide this notification to the United States Environmental Protection Agency (EPA) as well.
- C. The DoD Components will provide public notice of signing the FOSL; will retain the signed FOSL, including all regulatory comments and responses on the EBS and/or FOSL, in the transaction file (and the Administrative Record, where applicable); and will make the FOSL available to the public upon request.
- D. The EBS and the FOSL will be provided to each lessee prior to execution of the lease.
- E. Conditions will be included in the lease to ensure:
1. Notification of the existence of a Federal Facility Agreement (FFA), Interagency Agreement (IAG), or other **regulatory** agreements, orders or decrees for environmental restoration (e.g., RCRA/HSWA permit), if any. Terms of the lease shall not affect the **rights** and obligations of parties under the FFA, IAG, or other regulatory agreements, orders, or decrees.
  2. Environmental investigations and response oversight and activities will not be disrupted. Such conditions will include, but are not limited to:
    - a. providing for continued access for DoD and regulatory agencies to perform investigations as required on, or adjacent to, the real property, to monitor the effectiveness of the cleanup as required, to perform five-year reviews as required, **and/or** to take additional remedial or removal actions as required. At a minimum, such rights shall include all rights existing under the FFA.
    - b. ensuring that the proposed use will not disrupt **remediation** activities.
  3. Human health and the environment are protected by preventing the inappropriate use of the property.
  4. Compliance with health and safety plans.
  5. Subsequent transactions involving the property shall include such provisions.
- F. The attached model lease provisions will be included in all **outleases** and subleases, **unless** determined not to be appropriate by the DoD Component in consultation with the appropriate EPA or state representative. This determination will be documented by the DoD Component.

- G. Leases will provide that both the EBS and restrictive conditions in the lease, dealing with environmental requirements limiting use, will also be included in subleases as they occur. Copies of all subleases will be provided to the DoD Components with jurisdiction over the parcel, retained in the transaction file and made available to the public upon request.
- H. When the protection of human health and the environment requires substantial limitations on the use of a parcel proposed for lease; those limitations shall be described in the FOSL and, when requested in reference to a particular property or lease, the military service shall provide the regulators with a copy of the signed lease which implements such parcel specific restrictions.
- I. Amendments, renewals or extensions of leases shall not require a new EBS or FOSL, or an updating of them, unless the leased premises change substantially or the permitted uses of them **are** to change in environmentally-significant ways.

**ATTACHMENT**

**MODEL LEASE PROVISIONS**

NOTE: [ ] Indicates the need for lease specific information (e.g., installation name)

**ENVIRONMENTAL PROTECTION**

- 1 The sole purpose(s) for which the leased premises and any improvements thereon may be used, in the absence of prior written approval of the Government for any other use, [insert intended use of the leased premises].
- 2 The Lessee shall neither transfer nor assign this Lease or any interest therein or any property on the leased premises, nor sublet the leased premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this Lease without the prior written consent of the Government. Such consent shall not be unreasonably withheld or delayed. Every sublease **shall** contain the Environmental Protection provisions herein.
- 3 The Lessee and any sublessee shall comply with the applicable Federal, state, and local laws, regulations, and standards that are or may become applicable to Lessee's activities on the Leased Premises.
- 4 The Lessee and any sublessee shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under the Lease, independent of any existing permits.
- 5 The Government's rights under this Lease specifically include the right for Government officials to inspect upon reasonable notice the Leased Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. **The** Government normally will give the Lessee or sublessee twenty-four (24) hours prior notice of its intention to enter the Leased Premises unless it determines the entry is required for safety, environmental, operations, or security purposes. The Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, or contractor thereof.

NOTE: USE THE FOLLOWING PROVISION 6. IF THE LEASED PROPERTY IS PART OF A NATIONAL PRIORITIES LIST (NPL) SITE; ADAPT TO CLEANUP AGREEMENTS TO SUIT CLEANUPS UNDER STATE AUTHORITIES (E.G., A NON-NPL SITE).

- 6 The Government acknowledges that [insert name of military installation] has been identified as a National Priority List (**NPL**) Site under the Comprehensive Environmental Response, Compensation and Liability Act (**CERCLA**) of 1980, as amended. The Lessee acknowledges that the Government has provided it with a copy of the [insert name of military installation] Federal Facility Agreement (**FFA**) entered into by the United States Environmental Protection Agency (EPA) Region [insert number], the state of [insert name of state], and the Military Department and effective on [insert date], and will provide the Lessee with a copy of any amendments thereto. The Lessee agrees that should any conflict arise between the terms of such agreement as it presently exists or may be amended ("**FFA**," "Interagency Agreement" or "**IAG**") and the provisions of this Lease, the terms of the FFA or IAG will take precedence. The Lessee further agrees that notwithstanding any other provision of the Lease, the Government assumes no liability to the Lessee or its sublessees or licensees should implementation of the FFA interfere with the Lessee's or any sublessee's or licensee's use of the Leased Premises. The Lessee shall have no claim on account **of** any such interference against the United States or any officer, agent, employee or contractor thereof, other than for abatement of rent.

NOTE: USE THE FOLLOWING PROVISION 7. IF A FEDERAL FACILITIES AGREEMENT (**FFA**) OR INTERAGENCY AGREEMENT (**IAG**) APPLIES TO THE PROPERTY BEING LEASED (E. G., AN NPL SITE)

7. The Government, EPA, and the [insert name of state agency] and their officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee and any sublessee, to enter upon the Leased Premises for the purposes enumerated in this subparagraph and for such other purposes consistent with any provision of the FFA:

- (a) to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test-pitting, testing soil borings and other activities related to the [insert name of military installation] Installation Restoration Program (**IRP**), FFA or IAG;
- (b) to inspect field activities of the Government and its contractors and subcontractors in implementing the [insert name of military installation] IRP, FFA, or IAG;
- (c) to conduct any test or survey required by the EPA or [insert name of state agency] relating to the implementation of the FFA or environmental conditions at the Leased Premises or to verify any data submitted to the EPA or [insert name of state agency] by the Government relating to such conditions;
- (d) to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the [insert name of military installation] IRP or the FFA or IAG, including, but not limited to monitoring wells, pumping wells and treatment facilities.

NOTE: USE THE FOLLOWING ALTERNATE PROVISION 7. IF THE INSTALLATION RESTORATION PROGRAM (**IRP**) OR OTHER ENVIRONMENTAL INVESTIGATION APPLIES TO THE PROPERTY BEING LEASED (E. G., A NON-NPL SITE)

7. The Government and its officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee and any **sublessee**, to enter upon the Leased Premises for the purposes enumerated in this subparagraph:

- (a) to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test-pitting, testing soil borings and other activities related to the [insert name of military installation] Installation Restoration Program (**IRP**);
- (b) to inspect field activities of the Government and its contractors and subcontractors in implementing the [insert name of military installation] **IRP**;
- (c) to conduct any test or survey relating to the implementation of the **IRP** or environmental conditions at the Leased Premises or to verify any data submitted to the EPA or [insert name of state agency] by the Government relating to such conditions;
- (d) to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the [insert name of military installation] IRP, including, but not limited to monitoring wells, pumping wells and treatment facilities.

8. The Lessee agrees to comply with the provisions of any health or safety plan in effect under the IRP or the FFA during the course of any of the above described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by the Lessee and any **sublessee**. The Lessee and **sublessees** shall have no claim on account of such entries against the United States or any officer, agent, employee, contractor, or subcontractor thereof. In addition, the lessee shall comply with **all** applicable Federal, state and local occupational safety and health regulations.

9. The Lessee further agrees that in the event of any assignment or sublease of the Leased Premises, it shall provide to the EPA and [insert name of state agency] by certified mail a copy of the agreement or sublease of the Leased Premises (as the case may be) within fourteen (14) days after the effective date of such transaction. The Lessee

## Guidance and Policies on Fast Track Cleanup at Closing Installations

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may delete the financial terms and any other proprietary information from the copy of any agreement of assignment or sublease furnished pursuant to this provision.

10. The Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act, or its [insert state name] equivalent. Except as specifically authorized by the Government in writing, the Lessee must provide at its own expense such hazardous waste management facilities, complying with all laws and regulations. Government hazardous waste management facilities will not be available to the Lessee. Any violation of the requirements of this condition shall be deemed a material breach of this Lease.
11. DoD Component accumulation points for hazardous and other wastes will not be used by the Lessee or any sublessee. Neither will the Lessee or sublessee permit its hazardous wastes to be commingled with **hazardous** waste of the DoD Component.
12. The Lessee shall have a Government approved plan for responding to hazardous waste, fuel, and other chemical spills prior to commencement of operations on the leased premises. Such plan shall be independent of [insert name of installation] and, except for initial fire response and/or spill containment, shall not rely on use of installation personnel or equipment. Should the Government provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on request of the said **officer** conducting timely cleanup actions. the Lessee agrees to reimburse the Government for its costs.
13. The Lessee shall not construct or make or permit its sublessees or assigns to construct or make any substantial alterations, additions, or improvements to or installations upon or otherwise modify or alter the leased premises in any way which may adversely affect the cleanup, human health, or the environment without the prior written consent of the Government. Such consent may include a requirement to provide the Government with a performance and payment bond satisfactory to it in all respects and other requirements deemed **necessary** to protect the interests of the Government. For construction or alterations, additions, modifications, improvements or installations (collectively “work”) in the proximity of operable unit that are part of a National Priority List (NPL) Site, such consent may include a requirement for written approval by the Government’s Remedial Project Manager. Except as such written approval shall expressly provide otherwise, **all** such approved alterations, additions, modifications, improvements and installations shall become Government property when annexed to the leased premises.
14. The Lessee shall not conduct or permit its sublessees to conduct and subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of the Government.
15. The Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation Act (**RCRA**), or its state equivalent and any other applicable laws, rules or regulations. The Lessee must provide at its own expense such hazardous waste storage facilities which comply with all laws and regulations as it may need for such storage. Any violation of the requirements of this provision shall be deemed a material breach of this Lease.

## DOD POLICY ON THE IMPLEMENTATION OF THE COMMUNITY ENVIRONMENTAL RESPONSE FACILITATION ACT (CERFA)

### I. PURPOSE

This policy provides guidance to the Department of Defense (DoD) Components on implementing the Community Environmental Response Facilitation Act (**CERFA**), Public Law 102-425, October 19, 1992, as it amends Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (**CERCLA**) of 1980 (42 U.S.C. Section 9620(h)) for identifying and documenting all uncontaminated real property, or parcels thereof, at installations undergoing closure or realignment. The DoD Components may develop implementing procedures containing additional requirements based on their own specific organizational needs and unique requirements but which will, at a minimum, include, but not conflict with, the following documentation and procedures. Nothing in this policy shall affect, preclude, or otherwise impair the termination of DoD operations on real property owned by the United States.

### II. APPLICABILITY AND SCOPE

#### A. Applicability

This policy applies to the identification and documentation of uncontaminated real property controlled by the DoD Components where DoD plans to make excess property available for reuse pursuant to a base closure law. Uncontaminated property is defined as any real property on which no hazardous substances and no petroleum products or their derivatives, including aviation fuel and motor oil, were stored for one year or more, known to have been released, or disposed of. For purposes of this policy, the term “base closure law” includes the following:

1. **Title II** of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. Section 2687 note).
2. The Defense Base Closure and Realignment Act of 1990 (Part A of **Title XXIX** of Public Law 101-5 10; 10 U.S.C. Section 2687 note)
3. Section 2687 of Title 10, United States Code.
4. Any provision of law authorizing the closure or realignment of a military installation enacted on or after the date of enactment of CERFA.

#### B. Scope

The policy’s scope intends to meet the following objectives:

1. Ensure protection of human health and the environment.
2. Develop a DoD-wide process to assess, determine and document properties (parcels) which can be considered “uncontaminated” as defined above and in CERFA.
3. Ensure appropriate consultation with the public and coordination with and concurrence of regulatory agencies without **unduly** encumbering DoD’s authority **and** mandate to **make** property available for reuse in a timely manner.

### 111. POLICY

#### A. Requirement for Assessment, Determination and Documentation of Uncontaminated Property

In the case of real property to which this policy applies, the head of the DoD Component with accountability over the property, or his/her designated representative, shall assess, determine and document the real property, or parcels thereof, that can be considered as “uncontaminated” as defined above and in CERFA. This assessment and determination will be based on an Environmental Baseline Survey (EBS) as described below.

### B. Investigation

1. Environmental Baseline Survey (EBS). An EBS will be prepared for each installation being closed or **realigned**. The EBS will be based on **all** existing environmental information related to storage, release, treatment or disposal of hazardous substances or petroleum products on the property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or petroleum product. In certain cases, additional data, including sampling and analysis, may be needed in the EBS to support the determination.

A previously conducted EBS may be updated as necessary and used for making a **CERFA** determination, where appropriate. An EBS also can satisfy other environmental requirements (e.g., to reach a Finding of Suitability to Lease [FOSL] or Finding of Suitability to Transfer [FOST]).

2. Procedures for Conducting an EBS. The EBS will consider all sources of available information concerning environmentally significant current and past uses of the real property and shall, as a minimum, consist of the following:
  - a. Detailed search and review of available information and records in the possession of the DoD Components and records made available by the regulatory agencies or other involved Federal agencies. DoD Components are responsible for requesting and making reasonable inquiry into the existence and availability of relevant information and records to include any additional study information (e.g., surveys for asbestos, radon, lead-based paint, transformers containing PCB, Resource Conservation and Recovery Act Facility Assessments and Investigations [RFA & RFI]) to determine what, if any, hazardous substances or petroleum products may be present on the property.

NOTE: The presence of some of the above noted conditions (e.g., non-friable asbestos) should not preclude a **CERFA** determination of “uncontaminated.” However, their presence and any required protective actions should be identified and addressed.

- b. Review of all reasonably obtainable Federal, state, and local government records for each adjacent facility where there has been a release of any hazardous substance or any petroleum **product**, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product on the real property.
    - c. Analysis of aerial photographs that may reflect prior uses of the property which are in the possession of the Federal Government or are reasonably obtainable through state or local government agencies.
    - d. Interviews with current and/or former employees involved in operations on the real property.
    - e. Visual inspections of the real property; any buildings, structures, equipment, pipe, pipeline, or other improvements on the real property; and of properties immediately adjacent to the real property, noting sewer lines, runoff patterns, evidence of environmental impacts (e.g., stained soil, stressed vegetation, dead or ill wildlife) and other observations which indicate actual or potential release of hazardous substances or petroleum products.



- f. Identification of sources of contamination on the installation and on adjacent properties which could migrate to the parcel.
- g. Ongoing response actions or actions that have been taken at or adjacent to the property.
- h. A physical inspection of property adjacent to the real property, to the extent permitted by owners or operators of such property.
- i. Sampling, if the circumstances deem appropriate.

NOTE: For the purposes of paragraphs b, e, f, g & h above, “adjacent properties” should be defined as either those properties contiguous to the boundaries of the property being surveyed or other nearby properties. In either case, the survey should be addressed to those portions of the properties relatively near the installation that could pose significant environmental concern and/or have a significant impact on the results of the EBS.

3. Documentation of an EBS. At the completion of the EBS, a report will be prepared which will include the following:

- a. An Executive Summary briefly stating the areas of real property evaluated and the conclusions of the survey.
- b. The property identification (e.g., address, assessor parcel number, **legal** description).
- c. Any relevant information obtained from a detailed search of Federal Government records pertaining to the property, including available maps.
- d. Any relevant information obtained from a review of the recorded chain of title documents regarding the real property. The review should address those prior ownerships/uses that could reasonably have contributed to an environmental concern, and, at a minimum, cover the preceding 60 years.
- e. A description of past and current activities, including all past and current DoD and **non-DoD** uses to the extent such information is reasonably available, on the property and on adjacent properties.
- f. A description of hazardous substances or petroleum products management practices (to include storage, release, treatment or disposal) at the property and at adjacent properties.
- g. Any relevant information obtained from records reviews and visual and physical inspections of adjacent properties.
- h. Description of ongoing response actions **or** actions that have been taken at or adjacent to the property.
- i. References to key documents examined (e.g., aerial photographs, spill incident reports, investigation results). (The documents will be made available by DoD upon request.)

#### IV. PROCEDURES AND RESPONSIBILITIES

A. Regulatory agencies will be notified at the initiation of the EBS. The process of development of these documents will be designed to assure that regulators are provided adequate opportunity to express their views. Regulators will be provided with workable draft documents **as** they become available. Regulatory

## Guidance and Policies on Fast Track Cleanup at Closing Installations

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comments received during the development of these documents will be reviewed and incorporated as appropriate. Any unresolved regulatory comments will be included as attachments to the EBS.

- B. Once completed, the appropriate DoD Component official will review the EBS report and will, in the appropriate instance, determine that the property, or some portion of it, is uncontaminated as defined above and in CERFA.
- C. Once the above required determination has been made, the EBS report and determination will be provided immediately to the United States Environmental Protection Agency (EPA) Administrator and state and local government officials and made available to the public. In addition, a request for concurrence in such determination will be included in the submittal to the appropriate regulatory official. This request for concurrence will take place at the earliest possible time, but no later than 120 days prior to the deadlines discussed below. Additional supporting documentation will be made available upon request. In the case of real property that is part of a facility on the NPL, the appropriate concurring regulatory official will be the EPA Administrator or designated representative. In the case of real property that is not part of a facility on the NPL, the appropriate regulatory official will be the designated state official. In the case of a concurrence which is required from a state official, the concurrence is deemed to be obtained if, within 90 days after receiving a request for the concurrence, the State official has not acted (by either concurring or declining to concur) on the request for concurrence. The DoD Components will address relevant comments from regulatory officials that are received within the first 90 days of the 120-days period. Every effort will be taken to resolve any conflicts at the installation - regulatory agency level. Unresolved comments will be forwarded to the DoD Component's Deputy Assistant Secretary level. The EBS report along with regulatory comments, DoD responses to those comments, and signed regulatory concurrence will be included in the installation records and, where appropriate, in the Administrative Record.
- D. The identification required under paragraph III is not complete until the above concurrence in the results of the identification is obtained.
- E. For installations described in paragraph II.A. on which operations have been closed or realigned or scheduled for closure or realignment pursuant to a base closure law described in paragraphs II.A. 1. or II.A.2., by the date of enactment of CERFA, the identification and concurrence required above shall be made not later than 18 months after such date of enactment. (For installations designated in BRAC 88 or BRAC 91, the identification and concurrence process was completed by April 19, 1994 [18 months after the CERFA enactment date of October 19, 1992].)
- F. For installations described in paragraph II.A. on which operations are closed or realigned or become scheduled for closure or realignment pursuant to the base closure law described in paragraph II.A.2. after the date of the enactment of CERFA (October 19, 1992), the identification and concurrence required above shall be made no later than 18 months after the date by which a joint resolution disapproving the closure or realignment of the real property under Section 2904(b) of such base closure law must be enacted, and such a joint resolution has not been enacted.
- G. For installations described in paragraph II.A. on which operations are closed or realigned pursuant to a base closure law described in paragraphs II.A.3. & 4., the identification and concurrence required above shall be made not later than 18 months after the date on which the real property is selected for the closure or realignment pursuant to such base closure law.
- H. The deadline for uncontaminated parcel determinations does not preclude further investigation, after the CERFA deadline, to obtain concurrence that a parcel is CERFA uncontaminated. Such identification and concurrence shall only be sought if the Component deems it beneficial to property transfer and reuse.

# **DoD Guidance on the Environmental Review Process to Reach a Finding of Suitability to Transfer**

**[1 June 1994]**

Guidance on Reaching a Finding of Suitability to Transfer (FOST)

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THE DEPUTY SECRETARY OF DEFENSE  
WASHINGTON, D.C. 20201-1000

1 JUN 1994



MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
UNDER SECRETARIES OF DEFENSE  
COMPTROLLER  
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING  
ASSISTANT SECRETARIES OF DEFENSE  
GENERAL COUNSEL  
INSPECTOR GENERAL  
ASSISTANTS TO THE SECRETARY OF DEFENSE  
DIRECTOR, ADMINISTRATION AND MANAGEMENT  
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Finding of Suitability to Transfer for BRAC Property

On September 9, 1993, we issued DoD policy on Fast Track Cleanup at Closing Installations as part of the Department's implementation of the President's program to Revitalize Base Closure Communities.

The two documents attached to this memorandum provide guidance on the environmental review process for transferring property. The guidance was prepared by a joint OSD, Military Department, EPA workgroup and is a fundamental element in our guidance for the lease or transfer by deed of BRAC properties. The other elements are: (1) our 4 May 1994 memorandum of understanding with EPA on the suitability of leasing, required by the FY 94 Defense Authorization Act; and (2) the proposed procedures for DoD implementation of Section 2908 of this Act for "Transfer Authority in Connection with Payment of Environmental Remediation Costs."

I would like to call your attention to Section 330 of the National Defense Authorization Act for Fiscal Year 1993, as amended, that requires the Secretary of Defense to indemnify transferees of closing Defense property from claims that result from the release or threatened release by DoD activities of hazardous substances or petroleum products. The attached procedures provide the framework for ensuring that we do not assume unwarranted risks as we transfer property.

Our best efforts in this area are crucial to the successful transition from base closure to economic redevelopment. x ask for your continued personal support.

Attachments

11103

**DoD GUIDANCE ON THE ENVIRONMENTAL REVIEW PROCESS TO REACH A  
FINDING OF SUITABILITY TO TRANSFER (FOST)  
FOR PROPERTY WHERE RELEASE OR DISPOSAL HAS OCCURRED**

**I. PURPOSE.**

This policy provides guidance to the Department of Defense (DoD) Components on the necessary process to document parcels of real property made available through the Base Realignment and Closure (**BRAC**) process and which are environmentally suitable for transfer by deed under Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. Section 9620(h)). This policy does not apply to transfers of property to persons paying the cost of environmental restoration activities under the provisions of Section 2908 of the National Defense Authorization Act for N 94. The DoD Components may develop implementation procedures which may contain additional requirements based on their own specific needs and unique requirements but will, at a minimum, include the following documentation and procedures. This guidance applies to property where release or disposal of hazardous substances or petroleum products has occurred and which is being considered for transfer by deed. Nothing in this policy negates the requirement to comply with the National Environmental Policy Act (**NEPA**).

**II. APPLICABILITY AND SCOPE.**

This policy applies to all DoD installations selected for closure or realignment pursuant to the Base Closure and Realignment Act of 1988 (**P.L.** 100-526) (**BRAC** 88) or the Defense Base Closure and Realignment Act of 1990 (**P.L.** 101-510) (**BRAC** 91,93, and 95). The policy's scope intends to meet the following objectives:

- A. Ensure protection of human health and the environment.
- B. Develop a DoD-wide process to assess, determine and document the environmental suitability of properties for transfer by deed.
- C. Ensure transfer of properties by deed does not interfere with response actions being conducted at National Priorities List (**NPL**) sites under the provisions of a Federal Facilities Agreement or at non-NPL sites under the provisions of other types of agreements or any corrective action orders.
- D. Ensure compliance with all applicable environmental cleanup requirements and allow the DoD Component to demonstrate compliance with Section 120(h) of CERCLA before properties are **transferred** by deed.
- E. Provide for adequate public and regulatory participation without unduly encumbering the Defense Department Components' authority and mandate to make property available for reuse in a timely manner.
- F. Ensure a **sufficient** environmental review of the real property **being** considered for transfer is conducted to avoid unwarranted risks of future liability.

**III. POLICY.**

- A. Requirement for Assessment, Determination and Documentation of Properties Suitable for Transfer by Deed.

In the case of real property to which this policy applies, the head of the DoD Component with accountability over the property, or **his/her** designated representative, **shall** assess, determine and document when properties where release or disposal of hazardous substances or petroleum products has occurred are suitable for transfer by deed. This assessment and determination will be based on an Environmental Baseline Survey (**EBS**) and **will** be documented in a Finding of Suitability to Transfer (**FOST**) as described below.

### B. Investigation.

1. Environmental Baseline Survey (**EBS**). An EBS will be prepared encompassing any property to be transferred. The EBS will be based on **all** existing environmental information related to storage, release, treatment or disposal of hazardous substances or **petroleum** products on the property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or petroleum product. In certain cases additional data, including sampling, if appropriate under the circumstances, may be needed in the EBS to support the FOST determination.

A previously conducted EBS may be updated as necessary and used for making a FOST determination, where appropriate. An EBS also may satisfy other environmental requirements (e.g., to reach a Finding of Suitability to Lease [**FOSL**] or satisfy the requirements of the Community Environmental Response Facilitation Act [**CERFA**]).

2. Procedures for Conducting an EBS. The EBS will consider all sources of available information concerning **all** environmentally significant current and past uses of the real property and shall, at a minimum, consist of the following:
  - a. Detailed search and review of available information and records in the possession of the DoD Components or records made available by the regulatory agencies or other involved Federal agencies. **DoD** Components **are** responsible for requesting and making reasonable inquiry into the existence and availability of relevant information and records to include any additional study information (e.g., surveys for radioactive materials, asbestos, radon, lead-based paint, transformers containing PCB, Resource Conservation and Recovery Act Facility Assessments and Investigations [RFA and **RFI**], Underground Storage Tank Cleanup Program) to determine the environmental condition of the property.
  - b. Review of all reasonably obtainable Federal, State, and local government records for each adjacent facility where there has been a release of any hazardous substance or any petroleum product, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product on the real property.
  - c. Analysis of aerial photographs which are in the possession of the Federal Government or are reasonably obtainable through state or local government agencies that may reflect prior uses of the real property.
  - d. Interviews with current and/or former employees involved in operations on the real property.
  - e. Visual inspections of the real property; any buildings, structures, equipment, pipe, pipeline, or other improvements on the real property; and of properties immediately adjacent to the real property, noting sewer lines, runoff patterns, evidence of environmental impacts (e.g., stained soil, stressed vegetation, dead or ill wildlife) and other observations which indicate actual or potential release of hazardous substances or petroleum products.
  - f. Identification of sources of contamination on the installation and on adjacent properties which could migrate to the real property.
  - g. ongoing response actions **and** actions that have **been taken** at, or adjacent to, **the** real property.
  - h. A physical inspection of property adjacent to the real property, as appropriate, and to the extent permitted by owners or operators of such property.

NOTE: For the purposes of paragraphs b, e, f, g, & h above, “adjacent properties” are defined as either those properties contiguous to the boundaries of the property being surveyed or other nearby properties. In either case, the survey should be addressed to those portions of the properties relatively near the installation that could pose significant environmental concern and/or have a significant impact on the results of the EBS.

3. Documentation of an EBS. At the completion of the EBS, a report will be prepared which will include the following:
  - a. An Executive Summary briefly stating the areas of real property (or parcels) evaluated and the conclusions of the survey.
  - b. The property identification (e.g., address, assessor parcel number, legal description).
  - c. Any relevant information obtained from a detailed search of Federal Government records pertaining to the property, including available **maps**.
  - d. Any relevant information obtained from a review of the recorded chain of title documents regarding **the real** property. **The** review **should** address those prior ownerships/uses that could reasonably have contributed to an environmental concern, and, at a minimum, cover the preceding 60 years.
  - e. A description of past and **current** activities, including all past and **current** DoD and **non-DoD** uses to the extent such information is reasonably available, on the property and on adjacent properties.
  - f. A description of hazardous substances and petroleum products management practices (to include storage, release, treatment or disposal) at the property and at adjacent properties, to the extent such information is reasonably available.
  - g. Any relevant information obtained from records reviews and visual and physical inspections of adjacent properties.
  - h. Description of ongoing response actions or actions that have been taken at or adjacent to the property.
  - j. Reference to key documents examined (e.g., aerial photographs, spill incident reports, investigation results). (The documents will be made available by DoD upon request.)
4. Analysis of Intended Use. Before the signing of a FOST, an analysis of the intended use of the property, if known, will be conducted and will include:
  - a. An evaluation of the environmental suitability of the property for transfer by deed for the intended purpose, if known, including the rationale for the determination of such suitability.
  - b. A listing of specific recommended restrictions on use of the property, if any, to protect human **health** and the environment or the environmental restoration process. For **remediated** parcels such restrictions would include those documented in the Record of Decision (ROD) under the National Oil and Hazardous Substances Contingency Plan (**NCP**) or equivalent decision documents.

NOTE: The covenant required by **CERCLA** Section 120(h)(3) regarding hazardous substances must be based on either (1) a determination that no remedial action is required or (2) a determination that all remedial action necessary to protect human health and the environment has been taken. The determination that

## Guidance on Reaching a Finding of Suitability to Transfer (FOST)

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no remedial **action** is required or that all remedial **action** has been taken shall be supported by the appropriate documentation required by the program (e.g., CERCLA, **RCRA**, UST, DERP, state law) under which the property was evaluated and addressed. Such decision document may include a CERCLA Record of Decision (ROD), No Further Action ROD, No Further Response Action Planned (**NFRAP**), or other such similar RCRA, UST, DERP, or state law documentation, or other documentation that describes a consensus between the lead regulatory agency and the DoD Component. The intent is to use the processes under existing cleanup authorities and programs, and not create an additional separate process, to determine whether property requires remedial action or can be **transferred** as is. For property that requires remedial action, whether or not an NPL site and regardless of which cleanup authority is used, the covenant that all remedial action has been taken may only be made after a demonstration to EPA that an approved remedy is installed and operating properly and successfully.

### C. Finding of Suitability to Transfer (FOST).

After completion and review of the EBS, the intended use analysis, and any available local community reuse plan, the DoD Component will sign a FOST once a determination has been made that the property is suitable for transfer by deed for the intended purpose, if known, because the requirements of CERCLA Section 120(h)(3) have been met for the property, **taking** into account the potential risk of future liability. The DoD component will provide a copy of the signed FOST to the regulator.

## IV. PROCEDURES AND RESPONSIBILITIES

- A. Regulatory agencies **will** be notified at the initiation of the EBS **and** the FOST. The process of development of these documents will be designed to assure that regulators are provided adequate opportunity to express their views. Regulators will be provided with workable draft documents as they become available, including the EBS and the proposed **FOST**. Regulatory comments received during the development of these documents will be reviewed and incorporated as appropriate. Any unresolved regulatory comments will be included as attachments to the EBS or the POST.
- B. The regulatory agencies and public **will** be notified of the intent to sign a FOST. This will take place at the earliest possible time, but no later than 30 days prior to a transfer by deed. The notification will be mailed to the regulatory agencies and will include the draft FOST. Either the EBS report or a summary of the findings of the EBS process that pertain to the parcel to be **transferred** will be made available to the public. Additional supporting documentation **will** be made available upon request. The DoD Components will address relevant comments from regulatory officials and other appropriate entities that have been received within this 30-day period. After consideration of all relevant comments (unresolved **comments will be included as an appendix to the FOST**) **and signing** of the FOST, the DoD Component may proceed to convey the property by deed.
- C. The DoD Components will provide public notice of the signing of the FOST and will retain the signed FOST, including all regulatory comments and responses on the EBS and/or FOST, in the transaction file (and the Administrative Record, where applicable) and will make the FOST available to the public upon request.
- D. Conditions will be included in the transfer deed to:
  - 1. Ensure environmental investigations and remedial and oversight activities will not be disrupted at any time. Such conditions will include, but are not limited to:
    - a. Providing for continued access for DoD (or its designated contractor) and regulatory agencies to monitor the effectiveness of cleanup, perform five-year reviews, and/or take additional remedial or removal actions.



- b. Prohibiting activities that could disrupt any **remediation** activities or jeopardize the protectiveness of those remedies such as the following:
  - (1) Surface application of water that could impact the migration of contaminated ground **water**;
  - (2) Subsurface drilling or use of ground water unless DoD determines that there will be no adverse impacts on the cleanup process; or,
  - (3) Construction that would interfere with, negatively impact, or restrict access for cleanup work.
- 2. Limit use as required by the **FOST**.

**DoD GUIDANCE ON THE ENVIRONMENTAL REVIEW  
PROCESS TO REACH A  
FINDING OF SUITABILITY TO TRANSFER (FOST)  
FOR PROPERTY WHERE NO RELEASE OR DISPOSAL HAS OCCURRED**

**I. PURPOSE.**

This policy provides guidance to the Department of Defense (DoD) Components on the process to document parcels of real property made available through the Base Realignment and Closure (**BRAC**) process and which are environmentally suitable for transfer by deed under Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (**CERCLA**) (42 U.S.C. 9620 (h)). The DoD Components may develop implementation procedures which may contain additional requirements based on their own specific needs and unique requirements but will, at a minimum, include the following documentation and procedures. This guidance applies to property where no release or disposal of hazardous substances or petroleum products has occurred and which is being considered for transfer by deed, whether or not storage of hazardous substances or petroleum products has occurred. Nothing in this policy negates the requirement to comply with the National Environmental Policy Act (**NEPA**).

**II. APPLICABILITY AND SCOPE.**

This policy applies to all DoD installations selected for closure or realignment pursuant to the Base Closure and Realignment Act of 1988 (**P.L. 100-526**) (**BRAC 88**) or the Defense Base Closure and Realignment Act of 1990 (**P.L. 101-510**) (**BRAC 91,93, and 95**). The policy's scope intends to meet the following objectives:

- A. Ensure protection of human health and the environment.
- B. Develop a DoD-wide process to assess, determine, and document the environmental suitability of properties for transfer by deed.
- C. Ensure transfer of properties by deed does not interfere with response actions being conducted at National Priorities List (**NPL**) sites under the provisions of a Federal Facilities Agreement or at **non-NPL** sites under the provisions of other types of agreements or any corrective action orders.
- D. Ensure compliance with all applicable environmental cleanup requirements and allow the DoD Component to demonstrate compliance with Section 120(h) of CERCLA before properties are transferred by deed.
- E. Provide for adequate public and regulatory participation without unduly encumbering the DoD Components' authority and mandate to make property available for reuse in a timely manner.
- F. Ensure a **sufficient** environmental review of the real property being considered for transfer is conducted to avoid unwarranted risks of future liability.

**III. POLICY.**

- A. Requirement for Assessment, Determination and Documentation of Properties Suitable for Transfer by Deed.

In the case of real property to which this policy applies, the head of the DoD Component with accountability over the property, or **his/her** designated representative, shall assess, determine and document when properties where no release or disposal of hazardous substances or petroleum products has occurred are suitable for transfer by deed. This assessment and determination will be based on an Environmental

Baseline Survey (EBS) and will be documented in a Finding of Suitability to Transfer (FOST) as described below.

B. Investigation.

1. Environmental Baseline Survey (EBS). An EBS will be prepared encompassing any property to be **transferred**. The EBS will be based on all existing environmental information related to storage, release, treatment or disposal of hazardous substances or petroleum products on the property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or petroleum product. In certain cases additional data, including sampling, if appropriate under the circumstances, may be needed in the EBS to support the FOST determination.

A previously conducted EBS may be updated as necessary and used for making a FOST determination, where appropriate. An EBS also may satisfy other environmental requirements (e.g., to reach a Finding of Suitability to Lease [FOSL] or satisfy the requirements of the Community Environmental Response Facilitation Act [CERFA]).

2. Procedures for Conducting an EBS. The EBS will consider all sources of available information concerning **all** environmentally significant current and past uses of the real property and shall, at a minimum, consist of the following:
  - a. Detailed search and review of available information and records in the possession of the DoD Components or records made available by the regulatory agencies or other involved Federal agencies. DoD Components are responsible for requesting and **making** reasonable inquiry into the existence and availability of relevant information and records to include any additional study information (e.g., surveys for radioactive materials, asbestos, radon, lead-based paint, transformers containing PCB, Resource Conservation and Recovery Act Facility Assessments and Investigations [RFA and RFI], Underground Storage Tank Cleanup Program) to determine the environmental condition of the property.
  - b. Review of **all** reasonably obtainable Federal, State, and local government records for each adjacent facility where there has been a release of any hazardous substance or any petroleum product, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product on the real property.
  - c. Analysis of aerial photographs which are in the possession of the Federal Government or are reasonably obtainable through state or local government agencies that may reflect prior uses of the real property.
  - d. Interviews with current and/or former **employees** involved in operations on the real property.
  - e. Visual inspections of the real property; any buildings, structures, equipment, pipe, pipeline, or other improvements on the real property; and of properties immediately adjacent to the real property, noting sewer lines, runoff patterns, evidence of environmental impacts (e.g., stained soil, stressed vegetation, dead or ill wildlife) and other observations which indicate actual or potential release of hazardous substances or petroleum products.
  - f. Identification of sources of contamination on the installation and on adjacent properties which could migrate to the real property.
  - g. ongoing **response** actions and actions **that have been taken** at adjacent real property.

## Guidance on Reaching a Finding of Suitability to Transfer (FOST)

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- h. A physical inspection of property adjacent to the real property, as appropriate, and to the extent permitted by owners or operators of such property.

NOTE: For the purposes of paragraphs b, e, f, g, & h above, “adjacent properties” are defined as either those properties contiguous to the boundaries of the property being surveyed or other nearby properties. In either case, the survey should be addressed to those portions of the properties relatively near the installation that could pose significant environmental concern and/or have a significant impact on the results of the EBS.

- 3. Documentation of an EBS. At the completion of the EBS, a report will be prepared which will include the following:
  - a. An Executive Summary briefly stating the areas of real property (or parcels) evaluated and the conclusions of the survey.
  - b. The property identification (e.g., address, assessor parcel number, legal description).
  - c. Any relevant information obtained from a detailed search of Federal Government records pertaining to the property, including available maps.
  - d. Any relevant information obtained from a review of the recorded chain of title documents **regarding the real property**. The review **should** address those prior ownerships/uses that **could** reasonably have contributed to an environmental concern, and, at a minimum, cover the preceding 60 years.
  - e. A description of past and current activities, including **all** past and current DoD and **non-DoD** uses to the extent such information is reasonably available, on the property and on adjacent properties.
  - f. A description of hazardous substances and petroleum products management practices (to include storage, release or treatment) at the property and at adjacent properties, to the extent such information is reasonably available.
  - g. Any relevant information obtained from records reviews and visual and physical inspections of adjacent properties.
  - h. Description of ongoing response actions or actions that have been taken at adjacent real property.
  - i. Reference to key documents examined (e.g., aerial photographs, spill incident reports, investigation results). (The documents will be made available by DoD upon request.)
- 4. Analysis of the EBS. Before the signing of a FOST, a listing will be made of specific recommended restrictions on use of the property, if any, to protect human health and the environment.

### C. Finding of Suitability to Transfer (FOST).

After completion and review of the EBS, the DoD Component will sign a FOST once a determination is made that the property is suitable for transfer by deed because no hazardous substances or petroleum products were known to have been released or disposed of on the property, taking into account the potential risk of **future** liability. The DoD Component will provide a copy of the signed FOST to the regulator.

## IV. PROCEDURES AND RESPONSIBILITIES.

- A. Regulatory agencies will be notified at the initiation of the EBS and the FOST. The process of development of these documents will be designed to assure that regulators are provided adequate opportunity to express their views. Regulators will be provided with workable draft documents as they become available, including the EBS and the proposed FOST. Regulatory comments received during the development of these documents will be reviewed and incorporated as appropriate. Any unresolved regulatory comments will be included as attachments to the EBS or the FOST.
- B. The regulatory agencies and public will be notified of the intent to sign a FOST. This will take place at the earliest possible time, but no later than 30 days prior to a transfer by deed. The notification will be mailed to the regulatory agencies and will include the draft FOST. Either the EBS report or a summary of the findings of the EBS process that pertain to the parcel to be transferred will be made available to the public. Additional supporting documentation will be made available upon request. The DoD Components will address relevant comments from regulatory officials or other appropriate entities that have been received within this 30-day period. After consideration of all relevant comments (unresolved comments will be included as an appendix to the FOST) and signing of the FOST, the DoD Components may proceed to convey the property by deed.
- C. The DoD Components will provide public notice of the signing of the FOST and will retain the signed FOST, including all regulatory comments and responses on the EBS and/or FOST, in the transaction file (and the Administrative Record, where applicable) and will make the FOST available to the public upon request.
- D. Conditions will be included in the transfer deed to:
  - 1. Ensure that a response action or corrective action found to be necessary after the date of transfer by deed will be conducted by the United States.
  - 2. Grant the United States access to the property in any case in which a response action or corrective action is found to be necessary at the property after the date of transfer by deed, or such access is necessary to carry out a response action or corrective action on adjoining property.

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# **DoD Restoration **Advisory** Board (RAB)**

## **Implementation Guidelines**

### **[27 September 1994]**

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THE DEPARTMENT OF DEFENSE  
AND  
THE UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY



WASHINGTON, DC

SEP 27 1994

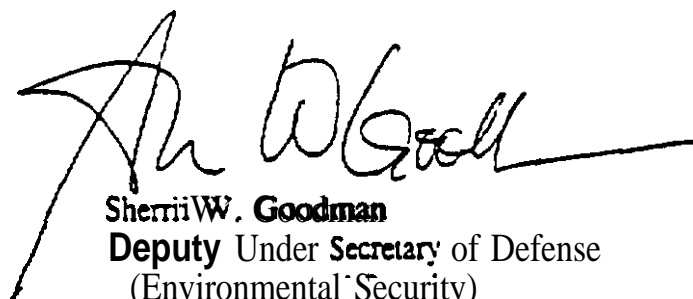
SUBJECT: Restoration Advisory Board (FLAB) **Implementation** Guidelines

The Department of Defense (DoD) is **taking** steps to increase public **participation in its** cleanup program. **New** DoD policy, which resulted from DoD's participation in the **Federal Facilities** Environmental Restoration Dialogue **Committee**, calls for Restoration Advisory **Boards (RABs)** to be formed at all closing installations and at non-closing installations where the local community expresses **interest**.

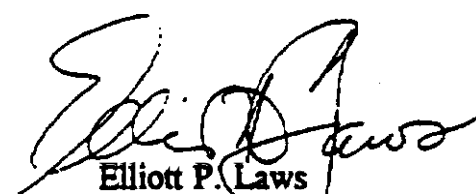
RABs are an expansion of DoD's Technical Review **Committee (TRC)** concept. The boards are a forum for exchange of information and partnership among citizens, the installation, EPA, and **State**. Most **importantly**, they offer an **opportunity** for communities to provide input to the cleanup **process**. It is our view **that** RABs **will** improve DoD's cleanup program by increasing community understanding and support for cleanup efforts, improving the soundness of **government** decisions, and ensuring cleanups are responsive to community needs.

The attached document **entitled** "Restoration Advisory Board **Implementation** Guidelines" provides recommended procedures for establishing and operating **RABs**. It is intended to **be a** resource for **installation**, EPA, and State personnel and citizens who participate **in RABs**. The guidelines were developed **by** a joint **DoD/EPA** working group which is a model for **interagency** cooperation.

The agency points of *contact on* RABs are, for DoD, Ms. Marcia Read, 703-697-9793; for EPA, Ms. Marilyn Null 202-260-5686.



Sherri W. Goodman  
Deputy Under Secretary of Defense  
(Environmental Security)  
Department of Defense



Elliott P. Laws  
Assistant Administrator  
Office of Solid Waste and Emergency  
Response  
U.S. Environmental Protection Agency

Attachment

## Restoration Advisory Board (RAB) Implementation Guidelines

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ACQUISITION AND  
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON DC 20301-3000



13 OCT 1994

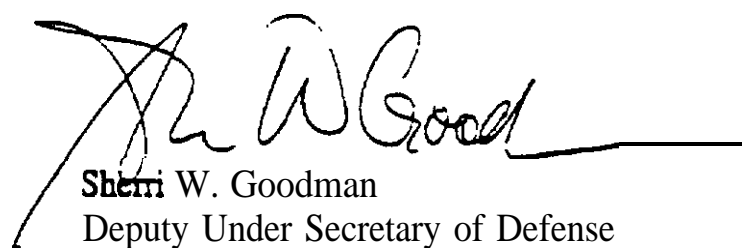
MEMO RANDUM FOR ASSISTANT SECRETARY OF THE ARMY  
(INSTALLATIONS, LOGISTICS & ENVIRONMENT)  
ASSISTANT SECRETARY OF THE NAVY  
(INSTALLATIONS & ENVIRONMENT)  
ASSISTANT SECRETARY OF THE AIR FORCE  
(MANPOWER, RESERVE AFFAIRS, INSTALLATIONS &  
ENVIRONMENT)  
DIRECTOR, DEFENSE LOGISTICS AGENCY (D)  
DIRECTOR, DEFENSE NUCLEAR AGENCY

SUBJECT: Restoration Advisory Board (RAB) Implementation Guidelines

RAB Implementation Guidelines are forwarded to assist in carrying out DoD's new policy to increase community involvement in the cleanup program. The guidelines were developed by a joint DoD/EPA Working Group and reflect feedback received from participants at the seven RAB training workshops held across the country last summer.

Installations which have cleanup programs should, at a minimum, be conducting outreach to nearby communities to determine whether there is interest in forming a RAB. If sufficient interest is demonstrated, the installation should initiate RAB formation in coordination with EPA, the State and the community. Where appropriate, existing Technical Review Committees should be converted to RABs. I intend to measure progress made in establishing RABs through the quarterly In-Progress Review process. This process is in place for measuring progress of cleanup activities at active and closing installations.

I ask your support in ensuring that RABs are established consistent with policy. I understand that RABs will require considerable effort to set up and maintain. However, it is my belief that RABs will improve the cleanup program by increasing community understanding and support for our efforts, improving the soundness of government decisions, and ensuring cleanups are responsive to community needs.



Sherri W. Goodman  
Deputy Under Secretary of Defense  
(Environmental Security)

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Environment Security  Defending Our Future



**DEPARTMENT OF DEFENSE  
AND  
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**



# **Restoration Advisory Board Implementation Guidelines**

**September 1994**

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*These guidelines are based on the “Interim Guidance for Implementing Restoration **Advisory** Boards, ” November 1993, **drafted** by **California** Environmental Protection Agency, Department of Toxic Substances Control.*

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
AND DEPARTMENT OF DEFENSE  
RESTORATION ADVISORY BOARD IMPLEMENTATION GUIDELINES**

## **I BACKGROUND**

The United States Environmental Protection Agency (EPA) and the Department of Defense (DoD) recognize the importance of public involvement at military installations that require environmental restoration. Therefore, EPA and DoD have developed joint Restoration Advisory Board (**RAB**) guidelines. DoD policies on community involvement can be found in the *“Management Guidance for Execution of the FY94/95 and Development of the FY96 Defense Environmental Restoration Program,”* April 14, 1994.

RABs bring together people who reflect the diverse interests within the local community, enabling the early and continued flow of information between the affected community, DoD and environmental oversight agencies. DoD is creating RABs to ensure that all **stakeholders** have a voice and can actively participate in a timely and thorough manner in the review of restoration documents. **RAB** community members will provide advice as individuals to the *decision-makers on restoration issues*. *It is a forum to be used for the expression and careful consideration* of diverse points of view. The **RAB** complements other community involvement **efforts**, but does not replace them. The DoD installation will continue to be responsible for fulfilling all statutorily mandated public involvement requirements.

This document provides guidelines to assist DoD installations on how to develop and implement a RAB and the role of environmental oversight agencies in this process. It is intended to be flexible so the DoD installation can adapt the **RAB** to meet the individual needs of the community.

The guidelines are based on recommendations contained in the February 1993, “Interim Report of the Federal Facilities Environmental Restoration Dialogue Committee.” While not identical, they are generally consistent with the Committee’s recommendations.

Although these guidelines are intended to apply at all military installations, EPA’s involvement on a RAB will vary based on the Comprehensive Environmental Response, Compensation, and Liability Act (**CERCLA**) National Priorities List (**NPL**) status of the installation. EPA is committed to full involvement on RABs as the Federal **regulatory agency** for all DoD installations on the **NPL** or at **base** closure sites where EPA has received resources from DoD. EPA’s involvement will be at the discretion of EPA’s regional office for non-NPL, non-base closure or base closure installations where EPA has not been given resources from DoD.

For this document, the term “stakeholder” is defined as parties that are actually or potentially affected by restoration activities at an installation.

## **II. RAB DEVELOPMENT**

Most DoD installations have already established Technical Review Committees (**TRCs**) to provide interested parties with a forum to discuss and provide input into site restoration activities as required by 10 USC 2705(c) and Executive Order 12580, “Superfund Implementation.” The DoD RAB policy calls for existing TRCs or similar groups to be expanded or modified to become RABs rather than create a separate committee, as long as the RABs meet the statutory requirements for **TRCs**. RABs provide an expanded opportunity for ongoing community input and participation in all phases of installation restoration activities and decision-making.

The RAB is not a replacement for other types of community outreach and participation activities required by law, regulation, or policy. Therefore, **all** existing public involvement requirements must still be completed, including the community relations requirements of CERCLA as amended by the Superfund Amendments and Reauthorization

## **Restoration Advisory Board (RAB) Implementation Guidelines**

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Act (SARA); and public involvement requirements of the Resource Conservation and Recovery Act (RCRA), National Environmental Policy Act (NEPA), and any state environmental regulations.

Although the DoD installation has the lead responsibility for the formulation and implementation of the RABs, the state and EPA, as appropriate, should be involved in all phases of RAB planning and operation.

### **Preparing for the Initial RAB Information Meeting**

Before the initial RAB information meeting, the DoD installation should begin the process of informing and educating the community about the purpose of the RAB and opportunities for membership and participation. This is especially important at installations where a TRC has not been formed or where the community has had limited participation in the TRC. This can be accomplished by completing the following suggested activities.

#### **Fact Sheet**

The DoD installation **should** prepare and distribute a brief, one-page fact sheet describing the RAB prior to the initial RAB information meeting. This should be done in consultation with the existing TRC, the state, and EPA, as appropriate. It may be advisable to distribute the fact sheet using any existing public participation mailing lists unless a wider distribution is deemed desirable. The fact sheet should describe the purpose of the RAB, membership opportunities, the membership selection process, and state the responsibilities of RAB members. Copies of the fact sheet should be made available to the public in information repositories established by the installation and widely accessible to the community. If a significant segment of the community is non-English speaking or visually impaired, the fact sheet should be translated. A sample RAB fact sheet is included as Enclosure 1.

#### **Public Notice**

A paid public notice should be issued to advertise the initial RAB information meeting in at least one newspaper of general circulation serving **the** affected communities **around the installation, as well as in the installation** newspaper. The public notice should be published in advance of the meeting and include the following information:

- time and location of the meeting
- notice of the intent to establish a **RAB** or transition the **TRC** to become a RAB, if applicable
- RAB purpose
- membership opportunities
- meeting is open for public attendance and participation
- name and phone number of contact person(s) for more information
- topics for consideration at the initial RAB information meeting

The public notice should be placed in a prominent section of the newspaper likely *to be* read by the majority of community members. A sample public notice is included as Enclosure 2.

#### **Agenda**

An agenda for the meeting should be developed by the DoD installation in consultation with the state and EPA, as appropriate. The agenda should reflect community restoration concerns as identified by existing community involvement activities (i.e., interview with key community leaders, review of correspondence, review of media coverage, etc.).

#### **Press Release**

The DoD installation's public affairs office should prepare and distribute a press release to explain the purpose of the RAB and the time and location of the meeting. Depending on local media coverage of installation

environmental *issues*, *it may be* appropriate to prepare a more extensive media packet of information to update the local media regarding installation restoration issues and activities.

### **Initial RAB Information Meeting**

The initial RAB information meeting should be sponsored by the DoD installation as soon as possible to ensure the expeditious execution of the RAB. This can be accomplished at the next regularly scheduled TRC meeting, as long as sufficient public notice is given, or at a community meeting held specifically for this purpose. Where a TRC currently exists, the TRC must evaluate its member composition and operation using the RAB criteria and modify, as appropriate. The DoD installation should consult with the state and the EPA, as appropriate, well in advance of the initial RAB information meeting on all matters related to the meeting.

The initial RAB information meeting may be facilitated by the DoD installation. If appropriate, the meeting could be facilitated by a professional facilitator with meeting facilitation skills and experience. A professional facilitator should be considered where a controversial situation is anticipated and a sense of independence **will** avoid, minimize, or even diffuse acrimonious deliberations.

The focus of the meeting should be to introduce the RAB concept to the community and begin the membership solicitation process. Some of the suggested topics to address include:

- overview and purpose of the RAB
- goal of representing diverse community interests
- difference between the **RAB** and the **TRC**
- memberships opportunities
- member selection process and time table
- member responsibilities and what is expected of members
- overview of installation restoration and/or conversion activities and plans (as appropriate)
- open **discussion/question** and answer period
- co-chair opportunities
- potential conflict of interest concerns

The date and location of the meeting should be chosen with the goal of making it convenient for a majority of community members to attend and participate. The meeting, as with all RAB meetings, should be held in a central location. Input from the community should be **strongly** considered regarding convenient meeting locations and times. The DoD, the state, and EPA should ensure that a representative and/or designee is in attendance at all RAB meetings.

The DoD installation should prepare meeting minutes summarizing the topics discussed at the meeting. The minutes should be a concise summary of the meeting rather than verbatim transcripts. Translation of meeting minutes should be provided if a large segment of the local community speaks a language other than English or members of the community are visually impaired. The minutes should be made available to the public at the information repositories and/or other places within two weeks of the meeting. The DoD installation may want to consider mailing copies of the minutes to all community members who attended the meeting, existing TRC members and/or to people identified on the installation's community relations mailing list.

### **Converting a TRC to a RAB**

If an installation already has a functioning TRC, it **should** be converted into a RAB instead of establishing a separate committee. Some of the tasks that need to be done to accomplish **the** conversion are: adding a community co-chair; increasing community representation; and making **all** meetings open to the public. **The** ultimate **goal** of the RAB is to improve communications among stakeholders and solicit input to be used in the decision process.

## Restoration Advisory Board (RAB) Implementation Guidelines

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As a part of the initial member selection process, the DoD installation, with input from the EPA, **as** appropriate, and the state, should evaluate diversity of the current membership of the TRC. DoD membership should consist of 1 to 2 members. As a general rule, TRC members should be given preference for a seat on the RAB to preserve continuity and the “institutional history” of the restoration process. This should be balanced against the preeminent need to form a RAB **trul**y representative of the community’s diverse interests.

### Formulating the RAB

#### Ensuring Membership Diversity and Balance

RAB members should be identified by a selection panel, see “Selecting Community Members.” The RAB should be comprised of members from the **local** community and representatives from DoD, the state, and EPA, as appropriate. Community members selected for RAB membership should reflect the diverse interests within the local community. RAB members should live/work in the affected community or be impacted by the restoration program. The following list of potential interests should be considered for representation on the RAB. This list is illustrative and not all inclusive. Each RAB should be developed to reflect the unique mix of interests and concerns within the local community.

- local residents/community members (including minorities and low income)
- local reuse committees
- Technical Assistance Grant (TAG) recipient
- current **TRC** members
- local** government officials/agencies
- business community
- school districts
- installation employees/residents
- local environmental groups/activists
- civic/public interest organizations
- religious community
- other regulatory agencies
- local homeowners organizations
- medical community
- Native American **tribes**

DoD, the state, and EPA, as appropriate, **will** generally have one member each on the RAB. While it is anticipated that other members of the installation and regulatory agencies will regularly **attend** and participate in RAB meetings as resources, the majority of RAB members should be from the local community.

#### Soliciting Community Members

For an effective RAB to be established quickly, the DoD installation, in coordination with the EPA, as appropriate, and the state, needs to inform and educate the **local** community about the formulation of the RAB, its purpose, and the opportunities for membership. The public outreach effort should be tailored to the individual community at each installation and may include letters to **local** government **officials** and community members. This is especially important at installations where there **has** been limited community involvement opportunities or where there has been minimal community and media interest in the installation.

Every effort should be made to ensure that all individuals or groups representing the community’s interests are informed about the RAB and given the opportunity for **RAB** participation. **Based on the results of member recruitment** efforts, it may be necessary to directly solicit some groups or organizations. A sample **RAB** member recruiting letter is included as Enclosure 3 and may be useful in such efforts. For ease in tracking community interest, a community interest form, Enclosure 4, can be developed and distributed at the initial meeting, made available at local information repositories or other suitable locations, and mailed to persons who write or call.



### Determining the Size of RAB

The initial size of the RAB will be determined by the RAB selection panel. Once the RAB is operational, procedures should be developed to address the addition and removal of RAB members. The RAB may want to re-evaluate the current RAB size, diversity and balance, and add members. To facilitate constructive dialogue, the RAB should generally be no larger than 20 individuals but no smaller than is necessary to adequately reflect the diversity of community interests regarding installation restoration. If RAB membership significantly exceeds 20, efforts should be made to consolidate and eliminate any duplicate representation of similar view points. If the RAB is larger than 20, the use of sub-committees should be considered.

### Selecting RAB Members

The transition period between the meeting to initiate RAB formulation and the implementation of a fully functioning RAB will likely be a busy, challenging period. Although the length of time required to complete the transition to a RAB will vary from installation to installation, most RABs should set a goal to be in full operation within six months from the meeting to initiate RAB formulation. During this period of time the following key activities should be completed to ensure successful development and implementation of the RAB.

#### *Selecting Community Members:*

*Selection Panel.* The installation Commanding Officer (CO) in consultation with the state and EPA, as appropriate, should identify community interests and solicit names of individuals who can represent these interests on the selection panel. Once the selection panel nominees have been provided, the CO in consultation with the state and EPA, as appropriate, should review the selection panel nominations to ensure balance and diversity. If nominations represent the diversity of the community, they **will** become the selection panel. The panel should establish and announce the following items:

- procedures for nominating community RAB members
- process for reviewing community interest forms
- criteria for selecting community RAB members
- list of RAB nominees

*Find Selection:* RAB membership selection should be in an open and fair manner using the panel. The panel will evaluate interest forms and develop a nomination list for the CO. The CO, in consultation with the state and EPA, as appropriate, should review the list to ensure that nominees represent the diversity of the community. If the list lacks diversity, the CO will ask the selection panel to provide a revised list. A lack of diversity or balance is the only reason a list can be rejected.

The selection panel may want **to** contact those who expressed interest but not selected for **RAB** membership **to** thank them for their interest and willingness to participate in the RAB. A letter to them should explain selection criteria, why they were not chosen and should encourage them to attend and participate at the RAB meetings as members of the general public. Their interest forms should be kept on file for consideration when future membership openings occur.

Additions to and removals from the RAB can be made at any time the RAB deems necessary. Procedures for additions and resignations should be outlined in the operating procedures.

**NOTE:** DOD contractor personnel should not be **RAB** members. However, for community RAB members who have business interests, membership on the RAB should not limit ability to compete for contracts. All information provided the RAB members should also be made available to the general public. Appropriate assurances should be made to avoid conflicts of interest.

### *Selecting Government Members:*

The DoD installation, state and local governments, and EPA, as appropriate, **should** be represented on the RAB. Members may include the Remedial Project Manager (RPM) from the service, state, and EPA, as appropriate, and representatives from local agencies. Representatives should dedicate the time necessary and have **sufficient** authority to **fulfill** RAB responsibilities. Whenever, possible, each entity should be represented by one individual. Other government **officials** such as public health officials from the Agency for Toxic Substances and Disease Registry (ATSDR) may attend RAB meetings as their expertise maybe needed.

In the case of closing military installations, the Base Realignment and Closure (BRAC) Cleanup Team (BCT) will be a member of the RAB. The BCT consists of representatives from the DoD service, EPA, and the state.

## III. RAB OPERATIONS

This section presents some **important** issues related to RAB operations. Once the RAB is officially formed, the RAB should develop and implement its operating procedures.

### Selecting Co-Chairs

Co-chairs' responsibilities should be jointly held between the installation and community and they will serve as equal partners. Selection of the DoD installation co-chair is by the installation's CO. The community co-chair should be selected by the community members of the RAB. The co-chairs should have sufficient authority and ability to fully undertake RAB chairperson responsibilities.

The length of the term to be served by the co-chairs should be decided upon by the RAB and outlined in the RAB's operating procedures, one-or two-year terms should be considered. This will allow for continuity, but also timely **change** if necessary. Co-chair termination procedures should be articulated in the RAB's operating procedures.

### Distributing a Fact Sheet

After the RAB is established, the **RAB** should consider preparing and distributing another brief fact sheet to announce that the RAB has been formed and publish the names of **RAB** members. The fact sheet could also announce the **RAB** meeting schedule, publicly thank all community members who expressed interest in RAB participation, and encourage ongoing community attendance and participation at future **RAB** meetings.

### Developing a RAB Mission Statement

Each RAB should develop a mission statement that articulates the overall purpose of the **RAB**. **The** statement can be brief. For example, "**The** RAB mission should be to establish and maintain a forum with all **stakeholders** for the exchange of information in an open and interactive dialogue concerning the installation's restoration program."

### Developing RAB Operating Procedures

The RAB should develop a set of operating procedures. The operating procedures should include policies on attendance, meeting frequency, procedures for removing, replacing co-chairs and replacing/adding other members, membership and co-chair length of service, methods for resolving member disputes, process for reviewing **and** responding to public comments, and procedures for public participation.

### Training for RAB Community Members

Once selected, RAB members may need some initial orientation to enable them to perform their duties. The DoD installation should work with the state, EPA and environmental groups to develop methods to quickly inform and educate the RAB members to promote the rapid formation of a fully functioning RAB. This may be accomplished at initial RAB meetings or at **special** orientation sessions and may include the following:

- formal training sessions
- workshops
- informal briefings
- briefing booklets, past fact sheets, maps
- site tours

Technical support staff from state, federal, and local agencies that have involvement with restoration and reuse issues may be asked to attend RAB meetings to provide information in their areas of expertise and will be available to provide information and explanation to RAB members.

### **Providing Administrative Support to the RAB**

The DoD installation needs to ensure that adequate administrative support is made available to establish and operate the RAB. It is especially important to provide for ongoing administrative support for closing or closed installations. Administrative support will usually include the following:

- meeting facilities
- preparation of meeting minutes and other routine word processing tasks
- copying/printing** of RAB documents, notices, fact sheets
- conduct mailings
- distribution of public notices in **local** newspapers
- management of **RAB** mailing lists
- translation and distribution of outreach and other RAB materials
- meeting facilitation

### **Funding for RABs**

Administrative and logistical support to meet the **RAB's** mission should be provided by the DOD installation, using the **Defense Environmental Restoration Account at non-BRAC installations, and BRAC funds at closing installations.**

### Technical Assistance

Community members of the RAB at NPL installations may establish an organization and apply for a Technical Assistance Grant from EPA, provided that a TAG has not already been awarded to another community group at the installation.

### **Scheduling Meetings**

RAB meetings should be scheduled on a regular basis. The individual RAB members should decide the scheduling and frequency of RAB meetings. The frequency of RAB meetings should be to ensure timely and effective communication. Closing installations may require more frequent meetings.

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The RAB meetings should be held in a location agreed upon by the RAB members **and in a location that is accessible to the physically impaired.** The development of the RAB concept **was** meant to ensure and enhance

## **Restoration Advisory Board (RAB) implementation Guidelines**

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community involvement in the process; providing the community with the opportunity to suggest meeting locations should assure this.

### **Special Focus Meetings**

When necessary, the RAB may meet for special focus meetings. These are meetings where a single topic or specific *document may* be reviewed, discussed, **and** commented on. **This may occur when the RAB determines the** need for input on specific issues in order to move ahead or the co-chairs **agree** that a special meeting is necessary.

### **Attending Meetings**

Ongoing and consistent involvement of all board members is essential to the success of the RAB. Regular attendance by all members or designated alternates is expected. Early in the process, the group should jointly establish **groundrules** for participation, including meeting attendance. Representatives from the DoD, environmental regulatory agencies, and the community should attend all RAB meetings. This will aid in the operation of the RAB as a team.

If after selection, a RAB member is unable to fully participate, the RAB, using pre-established rules, should ask the member to submit **his/her** resignation in writing to either of the **RAB** co-chairpersons. Procedures for **replacing/adding** members should be decided by the RAB,

### **Conducting the Meeting**

Each meeting should have a purpose and an agenda. Because these meetings are open to the public, a translator should be provided where a **large** portion of the community is non-English speaking or hearing impaired. If the RAB deems that an outside facilitator is necessary, arrangements should be made accordingly.

### **Nature of Discussions**

DOD will consider all advice provided by the RAB whether consensus in nature or provided on an individual basis, including advice given that represents the minority view of members. However, because DOD does not intend for Federal Advisory Committee Act (**FACA**) requirements to apply to RABs, consensus is not a prerequisite for RAB recommendations. Each individual should provide advice as an individual, not as a group. At the same time, while consensus is not required or asked of the board members, in the natural course of discussions consensus may evolve.

### **Format**

The meeting format of the RAB will vary. The format will be dictated by the needs of the RAB. Generally, a basic format should include:

- review of “old” business
- presentation or update by project technical staff and RAB member discussions
- question/answer/input/discussion period for **non-RAB** community participants
- list of action items for the RAB members
- discussion of the next meeting’s agenda

### **Meeting Minutes**

The **RAB** should prepare meeting minutes summarizing the topics discussed at RAB meetings. The minutes should be concise summaries of RAB meetings rather than verbatim transcripts to facilitate effective communication with the local communities. Before copies of the meeting minutes are distributed to existing members of the RAB and made available for public review, the co-chairs should review and approve them. These minutes should be made

available to the public within two weeks of the meeting. A public notice should be prepared to announce the availability of the meeting minutes and the next meeting. The DoD installation may want to consider mailing copies of the minutes to all community members who attend the RAB meetings and to those on the community relations mailing list.

The meeting minutes should be translated if a **large** segment of the local community speaks a language other than English or members of the community are visually impaired. The DoD installation is responsible for distributing copies of the meeting minutes and all documents to the RAB for review and comment and that this same information is consistently available for public review in the information repositories.

### **Responding to Comments**

The RAB should regularly review, discuss, and provide comments on a wide variety of technical documents and plans. This information should simultaneously be made available for public review and comments at the local information repositories. Public comments should be seriously considered before these documents or plans are finalized.

#### Public Comment Periods Required by Regulation

The DoD installation should solicit and respond to comments from the public as specified in applicable regulations. In some **cases, e.g. RCRA**, the regulatory agency is required to obtain public input on corrective actions. Accordingly, it may not be necessary for the DOD installation to seek public comment.

The public is the community at large, not only the RAB.

#### Other Comments

As a general rule, all draft and final documents deliverable to regulators should be distributed to the RAB and the public for review and comment when they are given to the regulators and should be made available for **at least 30** days for review. For documents where a review period shorter than 30 days applies to regulatory staff, this same shorter review period would also apply to the review by the RAB and community members. Every effort should be made to provide the **RAB** and community members with an adequate review period based on the length and complexity of **the** document. Where necessary, special focus meetings of the RAB may be called to review and comment on key documents.

To demonstrate commitment to meaningful consideration of comments, the DoD installation should prepare formal written responses to **all** substantive comments received from the RAB and the general public. In some cases, RAB meeting minutes may **suffice** to document responses to specific comments.

#### Addressing? Non-restoration Issues

Because RABs provides a direct channel for communication to the installation, community members may raise some non-restoration issues during RAB discussions. Although these issues may not be appropriate for discussion within the context of the RAB, DOD should be responsive to **these** concerns by referring them to the appropriate **offices** at **the** installation or to alternative forums more appropriate for **the** issue (i.e., at closing installations, **non-restoration** issues should be referred to the local Reuse Committee, the Base Transition Coordinator, or the BRAC Cleanup Team).

## **IV. ROLES AND RESPONSIBILITIES**

### **Department of Defense Installation Co-Chair**

## **Restoration Advisory Board (RAB) Implementation Guidelines**

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1. The DoD installation co-chair should coordinate with the community co-chair to prepare and distribute an agenda prior to each RAB meeting. If the RAB will address restoration related to base closure activities, the DoD and community co-chair should coordinate with the BRAC Cleanup Team, the Base Transition Coordinator, and the reuse committee.
- 2. The** DoD installation co-chair should ensure that DoD participates in an open and **constructive** manner.
3. The DoD installation co-chair should attend all meetings and ensure that the RAB has the opportunity to participate in the restoration decision process.
4. The DoD installation co-chair should ensure that community issues and concerns related to restoration are addressed when raised.
5. The DoD installation co-chair should ensure documents distributed to the RAB are also made available to the general public.
- 6.** The DoD installation co-chair with assistance from the RAB should ensure that an accurate list of interested/affected parties is developed and maintained.
7. The DoD installation co-chair should provide relevant policies and guidance documents to the RAB in order to enhance the RAB's operation.
8. The DoD installation co-chair should ensure that adequate administrative support to the RAB is provided.
9. The DoD installation co-chair should refer issues not related to restoration to appropriate installation official for them to address.
10. The DoD installation co-chair should report back to the installation.

### **Community Co-Chair**

1. The community co-chair should coordinate with the DoD installation co-chair and RAB community members to prepare an agenda prior to each RAB meeting.
2. The community co-chair should ensure that community members participate in an open and constructive manner.
3. The community co-chair should ensure that community issues and concerns related to restoration are raised.
4. The community co-chair **should** assist with the dissemination *of* information to the general **public**.
- 5. The** community co-chair should report back to the community.
- 6.** The community co-chair is expected to serve without compensation

### **RAB Community Members**

1. The RAB community members are expected to attend meetings.
2. The RAB community members are expected to provide advice and comment on restoration issues to the decision makers.

3. The RAB community members should represent and communicate community interests and concerns to the RAB
4. The RAB community members should act as a conduit for the exchange of information between the community, DoD installation, and environmental oversight agencies regarding the installation's restoration and reuse programs.
5. The RAB community members should review, evaluate, and comment on documents and other such materials related to installation restoration and closure, where applicable.
6. The RAB community members are expected to serve without compensation on the RAB.

#### **State Regulatory Agency Member**

1. The state member should attend RAB meetings.
2. The state member should serve as an information, referral and resource bank for communities, installations and agencies regarding installation restoration.
3. The state member should review documents and other materials related to restoration.
4. The state member should ensure that state environmental standards and regulations are identified and addressed by the DoD installation.
5. The state member should facilitate flexible and innovative resolutions of environmental issues and concerns.
6. The state member should assist in education and training for the RAB members.

#### **U.S. Environmental Protection Agency (EPA) Member**

1. The EPA member should attend RAB meetings.
2. The EPA member should serve as an information, referral and resource bank for communities, installations and agencies **regarding installation** restoration.
3. The EPA member should facilitate flexible and innovative resolutions of environmental issues and concerns.
4. The EPA member should ensure that federal environmental standards and regulations are identified and addressed by the DoD installation.
5. The EPA member should assist in education and training for the RAB members.

#### **BRAC Cleanup Team (BCT) at Closing Installations**

1. **The** BCT should maintain a close working relationship with other members of the RAB.
2. The BCT should provide timely and accurate information to the RAB.

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**ENCLOSURES**

## **Restoration Advisory Board (RAB) Implementation Guidelines**

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### **Enclosure (1) Sample RAB Fact Sheet**

#### **RESTORATION ADVISORY BOARD (RAB)**

*(name and location of installation)*

*(add site-specific logo if available)*

#### **Background**

**At** *(name of installation)* the *(name of service)* will be pursuing installation restoration activities as part of the Department of Defense's Installation Restoration Program (IRP). *(Provide a brief description of the restoration activities projected at the installation.)*

#### **What is a RAB?**

The **RAB** is an advisory body designed to act as a focal point for the exchange of information between *(name of installation)* and the local community regarding restoration activities. The **RAB** is intended to bring together community members who reflect the diverse interests **within** the local community, enabling the early and continued two-way flow of information, concerns, values, and needs between the affected community and the installation.

**RAB** members will be asked to meet regularly and review and comment on technical documents and plans relating to the ongoing environmental studies and restoration activities at *(name of installation)*. Members will be expected to serve as a liaison with the **community** and be available to meet with community members and groups. Membership terms will be decided by the **RAB**. All **RAB** meetings will be open to the public. Technical support staff will be available to provide informational support and explanation to **RAB** members.

#### **How to Become a RAB Member**

**Community members interested in finding** out more about the **RAB** are invited and encouraged to attend a community meeting that *(name of installation)* will conduct on *(date and time)*. At the meeting, you will learn about the purpose of the **RAB**, membership opportunities and responsibilities, and hear an update on the status of installation restoration activities and future plans. **RAB** membership applications will be available at the community meeting. The community meeting will be held at the following address:

*(List location, address, date, and time of meeting)*

If you have questions about the **RAB** or are interested in applying for RAB membership, community interest forms may also be obtained by **contacting**:

*(List name, title, address, and telephone number of contact)*

All Community Interest Forms must be received by *(deadline for forms)*. Forms will be reviewed and approved by the selection panel. The selection panel is organized by the Commanding **Officer** of *(name of installation)*. The selection panel members are representatives from the DoD installation, state, community and EPA, as appropriate.

#### **Enclosure (1) Sample RAB Fact Sheet (continued)**

#### **Community Expectations**

**Community members are expected to serve as volunteers on RABs to provide advice to the decision makers about restoration plans for the** *(name of installation)*.

Enclosure (2) Sample RAB Public Notice

**PUBLIC NOTICE**  
*(name of installation)*  
**Formation of Restoration Advisory Board**  
**Membership Solicitation**

The Department of Defense recognizes the importance of **stakeholder** participation for Installation Restoration Programs (IRP). Therefore, *(name of installation)* is announcing the establishment of a Restoration Advisory Board (FLAB). The **RAB** is intended to improve **public** participation by involving the community in the restoration **decision-making** process.

The existing Technical Review Committee (TRC) will be modified to become a **RAB**. The RAB will include community members who reflect the diverse interests of the local community. RAB members will be asked to review and comment on plans and activities **relating** to the ongoing environmental studies and restoration activities at *(name of installation)*. **RAB** members will have the opportunity to provide input on activities that will accelerate the restoration. Members will also be expected to serve as a voluntary liaison between the community and the **RAB** and be available to meet with community members **and/or** groups. **RAB** meetings will be open to the public.

Community interest forms can be obtained by contacting:

*(List name, title, address, and telephone number of contacts)]*

Members will be expected to serve a one-to two-year term and attend **RAB** meetings regularly. Forms **will** be reviewed and approved by the selection panel. The selection **panel** members **will** be representatives from the *(name of installation)*, *(name of state environmental agency)*, the community, and the U.S. Environmental Protection Agency, as appropriate. To **qualify**, interested parties must be local residents of *(name of cities or counties)* that **are impacted/affected** by *(name of installation)*.

The initial **RAB** information meeting will be held:

*(list location, date, and time of meeting)*

For additional information, please contact *(wine, address, and telephone number of contact)*.

### Enclosure (3) Sample RAB Recruiting Letter (Issued by Selection Panel)

#### RESTORATION ADVISORY BOARD FORMATION

Dear *(name of community member)*:

The Department of Defense recognizes the importance of stakeholder participation in our Installation Restoration Programs (IRP). Therefore, *(name of installation)* is announcing the establishment of a Restoration Advisory Board (RAB). The RAB is intended to improve public participation by involving the community in the restoration decision-making process.

The RAB will include community volunteer members who reflect the diverse interests of the local community. RAB members will have an opportunity to provide input on installation restoration activities. RAB community members can expect to spend *(number of hours/days)* per year supporting the RAB.

RAB members will be asked to meet regularly and review and comment on plans and activities relating to the ongoing environmental studies and restoration activities at *(name of installation)*. RAB members will be expected to serve as a liaison with the community and be available to meet with community members and groups. Members will be expected to serve a term. All RAB meetings will be open to the public.

If you are interested in participating on the RAB for *(name of installation)*, please complete the enclosed Community Interest Form and return it to the following address not later than *(deadline for applications)*:

*(List name, address, and telephone number of contact)*

Forms will be reviewed by a panel comprised of representatives from the community. The panel will nominate a list of community members for the RAB to the *(name of installation)* and appropriate regulatory agencies.

Sincerely,

*(name of selection panel member)*

**Enclosure (4) Sample RAB Community Interest Form**

**COMMUNITY INTEREST FORM FOR  
(NAME OF INSTALLATION) RESTORATION ADVISORY BOARD**

Conditions for Membership:

Restoration Advisory Board (**RAB**) members are volunteering to serve a term and attend all **RAB** meetings. Duties and responsibilities will include reviewing and commenting on plans and activities associated with the Installation Restoration Program at (name *of installation*). Technical experts **will** be made available to the **RAB**. Members will be expected to be available to community members and groups to facilitate the exchange of information and/or concerns between the community and the **RAB**. **RAB** community members can expect to devote approximately (*number of hours/days*) per year to support the **RAB**.

Priority for RAB membership will be given to local residents that are impacted/affected by the (name *of installation*).

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
                    Street                    Apt.#                    City                    State                    Zip

Phone: ( ) \_\_\_\_\_ ( ) \_\_\_\_\_ ( ) \_\_\_\_\_  
                    Daytime                    Home                    Fax

1. (OPTIONAL) Are you **affiliated** with any group related to restoration or base closure activities? If yes, list the group and your position, if applicable.
  
2. Briefly state why you would like to participate on the **RAB**.
  
3. What has been your experience working as a member of a diverse **group** with common goals?

## Restoration Advisory Board (RAB) Implementation Guidelines

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### Enclosure 4: Sample RAB Community Interest Form (continued)

4. The community co-chairperson will be selected by community members of the **RAB**. Please indicate if you are interested in being considered for the community co-chairperson position on the RAB.

☐ Yes, I would like to be considered.

5. Are you willing to voluntarily serve on the RAB?

☐ Yes, I am willing to serve.

6. By submitting this form, you are aware of the time commitment which this appointment will require of you.

PRIVACY ACT STATEMENT: The personal information requested on this form is **being** collected in order to determine interest in and qualification for membership on the Restoration Advisory Board. The information will be reviewed by a selection **panel** and **will** be retained in a file at *(name of installation)*. *The* information **will** not be disseminated. Providing information on this form is voluntary.

# **Doll Policies on Asbestos, Lead-Based Paint, and Radon at Base Realignment and Closure Properties [31 October 1994]**

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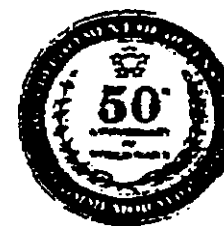




ACQUISITION AND  
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON DC 20301 -3000



31 OCT 1994

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY  
(INSTALLATIONS, LOGISTICS & ENVIRONMENT)  
ASSISTANT SECRETARY OF THE NAVY  
(INSTALLATIONS & ENVIRONMENT)  
ASSISTANT SECRETARY OF THE AIR FORCE  
(MANPOWER, RESERVE AFFAIRS, INSTALLATIONS &  
ENVIRONMENT)  
DIRECTOR, DEFENSE LOGISTICS AGENCY

SUBJECT: Asbestos, Lead Paint and Radon Policies at BRAC properties

The purpose of this memorandum is to request that you implement the attached Department of Defense (DoD) policies on asbestos, lead paint and radon at base realignment and closure (BRAC) properties.

As you may recall, these policies were drafted and accepted within the Defense Environmental Security Council (DESC) structure. During its May 6, 1994, meeting the DESC accepted the draft DoD policy on radon at BRAC properties. At that time the draft policies on asbestos and lead paint were referred to the Environment, Safety and Occupational Health Policy Board (ESOHPB) for revision and acceptance. During its May 10, 1994, meeting the ESOHPB accepted the revised draft DoD policies on asbestos and lead paint at BRAC properties.

Subsequent to DESC and ESOHPB action, these policies were coordinated formally with the Assistant Secretary of Defense (Economic Security) and the Office of the Deputy General Counsel (Acquisition & Logistics). If there are any questions concerning this request, please contact Ed Dyckman, DESC Executive Secretary at 703-697-9107.

Gary D. Vest  
Principal Assistant Deputy Under Secretary  
of Defense (Environmental Security)

Attachments

*Environmental Security*



*Defending Our Future*

**DOD POLICY ON ASBESTOS  
AT BASE REALIGNMENT AND CLOSURE PROPERTIES**

Department of Defense (DoD) policy with regard to asbestos-containing material (ACM) is to manage ACM in a manner protective of human health and the environment, and to comply with all applicable Federal, State, and local laws and regulations governing ACM hazards. Therefore, unless it is determined by competent authority that the ACM in the property does pose a threat to human health at the time of transfer, all property containing ACM will be conveyed, leased, or otherwise disposed of as is through the Base Realignment and Closure (**BRAC**) process.

Prior to property disposal, all available information on the existence, extent, and condition of ACM shall be incorporated into the Environmental Baseline Survey (**EBS**) report or other appropriate document to be provided to the transferee. The survey report or document shall include:

- reasonably available information on the type, location, and condition of asbestos in any building or improvement on the property;
- any results of testing for asbestos;
- a description of any asbestos control measures taken for the property;
- any **available** information on costs or time necessary to remove **all** or any portion of the remaining ACM; however, special studies or tests to obtain this material are not required; and
- results of a site-specific update of the asbestos inventory performed to **revalidate** the condition of ACM.

Asbestos-containing material shall be remedied prior to property disposal only if it is of a type and condition that is not in compliance with applicable laws, regulations, and standards, or if it poses a threat to human health at the time of transfer of the property. This remediation should be accomplished by the active Service organization, by the Service disposal agent, or by the transferee under a negotiated requirement of the contract for sale or lease. The remediation discussed above will not be required when the buildings are scheduled for demolition by the **transferee**; the transfer document prohibits occupation of the buildings prior to the demolition; and the transferee assumes responsibility for the management of any ACM in accordance with applicable laws.

## **DOD POLICY ON LEAD-BASED PAINT AT BASE REALIGNMENT AND CLOSURE PROPERTIES**

Department of Defense (DoD) policy with regard to lead-based paint (LBP) is to manage LBP in a manner protective of human health and the environment, and to comply with all applicable **Federal**, State, and local laws and **regulations** governing LBP hazards. The Federal requirements for residential structures/dwellings with LBP on Base Realignment and Closure (BRAC) properties differ, depending on: (1) the date of property transfer; and (2) the date of construction of the residential housing being transferred.

DoD policy is to manage LBP at BRAC installations in accordance with either 24 CFR 35 or P.L. 102-550, at the Service's discretion, until January 1, 1995; and, thereafter, solely in accordance with P.L. 102-550. Residential structures/dwellings are as defined in the applicable regulation and any regulation issued pursuant thereto. The Military Components may apply this policy to any other structures they deem appropriate.

On January 1, 1995, and thereafter, the provisions of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of P.L. 102-550) concerning the transfer of Federal property for residential use take effect. These provisions, codified at (in pertinent part) 42 U.S.C. 4822, 4851-4856, and 15 U.S.C. 2688, are applicable to target housing, which is housing constructed prior to 1978, with limited exceptions for housing for the elderly or persons with disabilities or any O-bedroom dwelling.

Target housing constructed after 1960 and before 1978 must be inspected for LBP and LBP hazards. The results of the inspection must be provided to prospective purchasers or transferees of BRAC property, identifying the presence of LBP and LBP hazards on a surface-by-surface basis. There is no Federal LBP hazard abatement requirement for such property. In addition, prospective transferees must be provided a lead hazard information pamphlet and the contract for sale or lease must include a lead warning statement.

Target housing constructed before 1960 must be inspected for LBP and LBP hazards, and such hazards must be abated. The results of the LBP inspection will be provided to prospective purchasers or transferees of BRAC property identifying the presence of LBP and LBP hazards on a surface-by-surface basis and a description of the abatement measures taken. In addition, prospective transferees must be provided with a lead hazard information pamphlet and the contract for transfer must include a lead warning statement.

The inspection and abatement discussed above will not be required when the building is scheduled for demolition by the transferee and the transfer document prohibits occupation of the building prior to the demolition; the building is scheduled for non-residential use; or, if the building is scheduled for residential use, the transferee conducts renovation consistent with the regulatory requirements for the abatement of LBP hazards.

Effective January 1, 1995, DoD **BRAC** properties shall be transferred in accordance with any regulations implementing the Residential Lead-Based Paint Hazard Reduction Act of 1992. The Act also made Federal agencies subject to all Federal, State, interstate, and local substantive and procedural requirements respecting LBP and LBP hazards (see 15 U.S.C. 2688). Therefore, there may be more stringent local requirements applicable to Federal property transfers.

**DOD POLICY ON RADON  
AT BASE REALIGNMENT AND CLOSURE PROPERTIES**

In response to concerns with the potential **health** effects associated with radon exposure, and in accordance with the Indoor Radon Abatement provisions of Subchapter III of the Toxic Substances Control Act, 26 U.S.C. 2661 to 2671, the Department of Defense (DoD) conducted a study to determine radon levels in a representative sample of its buildings. In addition, as part of DoDs voluntary approach to reducing radon exposure, DoD has applied the Environmental Protection Agency (EPA) guidelines for residential structures with regard to remedial actions.

DoD policy is to ensure that any available and relevant radon assessment data pertaining to Base Realignment and Closure (**BRAC**) property being transferred shall be included in property transfer documents.

DoD policy is not to perform radon assessment and mitigation prior to transfer of **BRAC** property unless otherwise required by applicable law.

# **Doll Guidance on Implementation of Authority to Transfer Property Before Completing Remediation [24 September 1996]**

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OFFICE OF THE UNDER SECRETARY OF DEFENSE  
3000 DEFENSE PENTAGON  
WASHINGTON DC 20301-3000

24 SEPTEMBER 1996

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS, LOGISTICS  
AND ENVIRONMENT)  
ASSISTANT SECRETARY OF THE NAVY (INSTALLATIONS AND  
ENVIRONMENT)  
ASSISTANT SECRETARY OF THE AIR FORCE (MANPOWER, RESERVE  
AFFAIRS, INSTALLATIONS AND ENVIRONMENT)  
DIRECTOR, DEFENSE LOGISTICS AGENCY

**SUBJECT: Implementation of Authority to Transfer Property before Completing Remediation**

The Fiscal Year 1997 Defense Authorization Act contains a provision (section 334) that modifies section 120(h)(3) of the Comprehensive Environmental Response, Cleanup, and Liability Act to allow contaminated federal real estate to be transferred to private parties before remedial action has been taken. Although this authority provides an opportunity for the Department to assist communities in expediting reuse of closing military installations, it also presents certain challenges in properly structuring the arrangement.

We will be working closely with you and the U.S. Environmental Protection Agency to revise our Fast-Track Cleanup guidances to ensure effective implementation of this provision consistent with the protection of human health and the environment. We anticipate focusing on **existing** procedures, particularly the steps outlined in the Finding of Suitability for Transfer guidance.

We encourage you to explore the use of this new authority with Restoration Advisory Boards, Local Reuse Authorities, and others with whom you are working. Until we have implementing guidance, however use of this provision will be addressed on a case-by-case basis and only after consultation with this office. Please notify this office at your earliest convenience when you and another party begin negotiations that may involve the use of this authority.

We look forward to working closely with you to ensure that we use this new authority effectively and with appropriate safeguards regarding our long term liability. For further information, please contact Mr. John Stowers at (703) 697-9746.

{Original Signed}  
Sherri W. Goodman  
Deputy Under Secretary of Defense  
(Environmental Security)

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**DoD Guidance on Clarification of  
“Uncontaminated” Environmental  
Condition of Property at Base  
Realignment and Closure (BRAC)  
Installations  
[21 October 1996]**

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OFFICE OF THE UNDER SECRETARY OF DEFENSE  
3000 DEFENSE PENTAGON  
WASHINGTON DC 20301-3000

21 OCTOBER 1996

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS, LOGISTICS  
AND ENVIRONMENT)  
ASSISTANT SECRETARY OF THE NAVY (INSTALLATIONS AND  
ENVIRONMENT)  
ASSISTANT SECRETARY OF THE AIR FORCE (MANPOWER,  
RESERVE AFFAIRS, INSTALLATIONS AND ENVIRONMENT)  
DIRECTOR, DEFENSE LOGISTICS AGENCY (D)

**SUBJECT:** Clarification of “Uncontaminated” Environmental Condition of Property at Base  
Realignment and Closure (BRAC) Installations

Section 331 of the Fiscal Year 1997 National Defense Authorization Act clarified the meaning of “uncontaminated” by deleting the phrase “stored for one year or more” from Section 10 of the Comprehensive Environmental Response, Cleanup and Liability Act (CERCLA). Parcels of property on which hazardous substances or **petroleum** products may only have been stored for more than a year - but not released or disposed of- are now deemed to be “uncontaminated.” This change places greater emphasis on whether there has been a release or disposal of a hazardous substance in real property transfers under CERCLA. Definitions for the seven categories of environmental condition of property used in the **BRAC** cleanup process have been revised to conform with the new meaning of “uncontaminated” and are attached. The BRAC Cleanup Plan (BCP) Guidebook has been revised to conform to the new meaning and is being distributed separately. The revised definitions apply to all BRAC rounds and should be particularly helpful for completing the Community Environmental Response Facilitation Act (CERFA) evaluations for the BRAC 1995 installations.

The CERCLA 120 (h)(4) covenant can be given only if regulatory agencies concur with the “uncontaminated” determination; otherwise the CERCLA 120(h)(3) covenant must be used. Under the revised CERFA guidance contained in the May 18, 1996 DoD policy for “Fast-Track Cleanup at Closing Installations,” regulatory concurrence on “uncontaminated” determinations for parcels of property may be obtained after the statutory CERFA deadline if the Component believes such concurrence would facilitate the transfer and reuse of the property. With the new meaning of “uncontaminated,” Components may, during the Finding of Suitability to Transfer (FOST) process, look at whether property from **BRAC** rounds prior to BRAC 95 meets the new definition and seek regulatory concurrence.

I appreciate the assistance of your staffs in revising the definitions for the environmental condition of property. My staff point of contact is Mr. Shah A. Choudhury, at (703) 697-7475

{Original Signed}  
Sherri W. Goodman  
Deputy Under Secretary of Defense  
(Environmental Security)

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# **Doll Policy on Responsibility for Additional Environmental Cleanup After Transfer of Real Property [25 July 1997]**

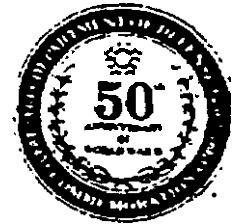
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ACQUISITION AND  
TECHNOLOGY

THE UNDER SECRETARY OF DEFENSE  
3010 DEFENSE **PENTAGON**  
WASHINGTON, **D.C. 20301** -3010

JUL 25 1997



MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY  
(INSTALLATIONS, **LOGISTICS AND ENVIRONMENT**)  
ASSISTANT SECRETARY OF THE NAVY  
(**INSTALLATIONS AND ENVIRONMENT**)  
ASSISTANT SECRETARY OF THE AIR FORCE  
(MANPOWER, RESERVE AFFAIRS, INSTALLATIONS AND  
ENVIRONMENT')  
DEPUTY UNDER SECRETARY OF DEFENSE  
(ENVIRONMENTAL SECURITY)  
DEPUTY UNDER SECRETARY **OF** DEFENSE  
(INDUSTRIAL AFFAIRS AND INSTALLATIONS)  
**DIRECTOR, DEFENSE LOGISTICS AGENCY (D)**

**SUBJECT: Responsibility** for Additional Environmental Cleanup after Transfer of Real Property

The purpose of the attached policy is to describe the circumstances under which DoD would **perform** additional cleanup on DoD property **that** is transferred by deed to any person **or entity** outside the federal government. This policy is applicable to real property under DoD control that is to be transferred outside **the** federal government, and is effective **inundaly**. For property that is transferred pursuant to section **120(h)(3)(C)** of the Comprehensive Environmental Response, Compensation, and **Liability** Act (**CERCLA**, 42 USC 9620(h)(3)(C)), **this policy** applies after the termination of the **deferral** period.

DoD **continues** to be committed to a remedy selection process that provides for **full** protection of **human health** and the **environment**, even after property has been transferred by DoD. The Deputy Under **Secretary** of Defense (Environmental *Security*) **will** issue **separately** any specific guidance needed to **implement** this policy. This **policy** should be read to **be** compatible with and does not supersede **other** related DoD **polices**, **and** is *to be* incorporated in the next revision **of** the appropriate DoD Instruction. I ask for your support in implementing this **policy** and working with communities so that they can make informed **decisions in** developing their redevelopment plans.

R. Noel Longuemare  
Acting Under Secretary of Defense  
(Acquisition and Technology)



## Policy on Responsibility for Additional Environmental Cleanup

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### DoD Policy on Responsibility for Additional Environmental Cleanup After Transfer of Real Property

Background. This policy is instituted within the framework established by land use planning practices and land use planning authorities possessed by communities, and the environmental restoration process established by statute and regulation. The land use planning and environmental restoration processes – two separate processes - are interdependent. Land use planners need to know the environmental condition of property in order to make plans for the future use of the land. Similarly, knowledge of land use plans is needed in order to ensure that environmental restoration efforts are focused on making the property available when needed by the community and that remedy selection is compatible with land use. This policy does not supplant either process, but seeks to integrate the two by emphasizing the need to integrate land use planning assumptions into the cleanup, and to notify the community of the finality of the cleanup decisions and limited circumstances under which DoD would be responsible for additional cleanup after transfer.

Cleanup Process. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 USC 9601 et seq.) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP, 40 CFR 300) establish the requirements and procedures for the cleanup of sites that have been contaminated by releases of hazardous substances. CERCLA, furthermore, requires that a deed for federally owned property being transferred outside the government contain a covenant that all remedial action necessary to protect human health and the environment has been taken, and that the United States shall conduct any additional remedial action “found to be necessary” after transfer. Within the established restoration process, it is DoD’s responsibility, in conjunction with regulatory agencies, to select cleanup levels and remedies *that are* protective of human health and the environment. The environmental restoration process also calls for public participation, so that the decisions made by DoD and the regulatory agencies have the benefit of community input.

Land Use Assumptions in Cleanup Process. Under the NCP, future land use assumptions are developed and considered when performing the baseline risk assessment, developing remedial action alternatives, and selecting a remedy. The NCP permits other-than-residential land use assumptions to be considered when selecting cleanup levels and remedies, so long as selected remedies are protective of human health and the environment. The U.S. Environmental Protection Agency (EPA) further amplified the role of future land use assumptions in the remedy selection process in its May 25, 1995, “Land Use in the CERCLA Remedy Selection Process” directive (OSWER Directive No. 9355.7-04).

Development of Land Use Plans. By law, the local community has been given principal responsibility for reuse planning for surplus DoD property being made available at Base Realignment and Closure (BRAC) installations. That reuse planning and implementation authority is vested in the Local Redevelopment Authority (LRA) described in the DoD Base Reuse Implementation Manual (DoD 4165.66-M). The DoD Base Reuse Implementation Manual calls for the LRA to develop the community redevelopment plan to reflect the long term needs of the community. A part of the redevelopment plan is a “land use plan” that identifies the proposed land use for given portions of the surplus DoD property. The DoD is committed to working with local land use planning authorities, local government officials, and the public to develop realistic assumptions concerning the future use of property that will be transferred by DoD. The DoD will act on the expectation that the community land use plan developed by the LRA reflects the long-range regional needs of the community.



Use of Land Use Assumptions in the Cleanup Process. DoD environmental restoration efforts for properties that are to be transferred out of federal control will attempt, to the extent reasonably practicable, to facilitate the land use and redevelopment needs stated by the community in plans approved prior to the remedy selection decision. For BRAC properties, the LRA's redevelopment plan, specifically the land use plan, typically will be the basis for the land use assumptions DoD will consider during the remedy selection process. For non-BRAC property transfers, DoD environmental restoration efforts will be similarly guided by community input on land use, as provided by the local government land use planning agency. In the unlikely event that no community land use plan is available at the time a remedy selection decision requiring a land use assumption must be made, DoD will consider a range of reasonably likely future land uses in the remedy selection process. The existing land use, the current zoning classification (if zoned by a local government), unique property attributes, and the current land use of the surrounding area all may serve as useful indicators in determining likely future land uses. These likely future land uses then may be used for remedy selection decisions which will be made by DoD (in conjunction with regulatory agencies) in accordance with CERCLA and the NCP.

DoD's expectation is that the community at-large, and in particular the land use planning agency, will take the environmental condition of the property, planned remedial activities, and technology and resource constraints into consideration in developing their reuse plan. The February 1996 "Guide to Assessing Reuse and Remedy Alternatives at Closing Military Installations" provides a useful tool for considering various possible land uses and *remedy* alternatives, so that cost and time implications for both processes can be examined and integrated. Obviously, early development of community consensus and publication of the land use plan by the LRA or the land planning agency will provide the stability and focus for DoD cleanup efforts.

Applicable guidelines in EPA's May 25, 1995, "Land Use in the CERCLA Remedy Selection Process" Directive should be used in developing cleanup decisions using land use assumptions. For a remedy that will require restrictions on future use of the land, the proposed plan and record of decision (ROD) or other decision documents must identify the future land use assumption that was used to develop the remedy, specific land use restrictions necessitated by the selected remedy, and possible mechanisms for implementing and enforcing those use restrictions. Examples of implementation and enforcement mechanisms include deed restrictions, easements, inspection or monitoring, and zoning. The community and local government should be involved throughout the development of those implementation and enforcement mechanisms. Those mechanisms must also be valid within the jurisdiction where the property is located.

Enforcement of Land Use Restrictions. The DoD Component disposal agent will ensure that transfer documents for real property being transferred out of federal control reflect the use restrictions and enforcement mechanisms specified in the remedy decision document. The transfer document should also include a description of the assumed land use used in developing the remedy and the remedy decision. This information required in the transfer documents should be provided in the environmental Finding Of Suitability to Transfer (FOST) prepared for the transfer. The DoD Component disposal agent will also ensure that appropriate institutional controls and other implementation and enforcement mechanisms, appropriate to the jurisdiction where the property is located, are either in-place prior to the transfer or will be put in place by the transferee as a condition of the transfer. If it becomes evident to the DoD Component that a deed restriction or other institutional control is not being followed, the DoD Component will attempt to ensure that appropriate actions are taken to enforce the deed restriction.

The DoD expects the transferee and subsequent owners to abide by restrictions stated in the transfer documents. The DoD will reserve the right to enforce deed restrictions and other institutional controls, and the disposal agent will ensure that such language is also included in the transfer documents. If DoD becomes aware of action or inaction by any future owner that will cause or threaten to cause a

## Policy on Responsibility for Additional Environmental Cleanup

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release or cause the remedy not to perform effectively, DoD also reserves the right to perform such additional cleanup necessary to protect human health and the environment and then to recover costs of such cleanup from that owner under the terms of the transfer document or other authority.

Circumstances Under Which DoD Would Return to do Additional Cleanup. A determination may be made in the future that the selected remedy is no longer protective of human health and the environment because the remedy failed to perform as expected, or because an institutional control **has** proven to be ineffective, or because there has been a subsequent discovery of additional contamination attributable to DoD activities. This determination maybe made by DoD as a part of the remedy review process, or could be a regulatory determination that the remedy has failed to meet remediation objectives. In these situations, the responsible DoD Component disposing of the surplus property will, consistent with CERCLA Section 120(h), perform such additional cleanup as is both necessary to remedy the problem and consistent with the future land use assumptions used to determine the original remedy. Additionally, after the transfer of property from DoD, applicable regulatory requirements maybe revised to reflect new scientific or health data and the remedy put in place by DoD maybe determined to be no longer protective of human health and the environment. In that circumstance, DoD will Likewise, consistent with CERCLA Section 120(h), return to perform such additional cleanup as would be generally required by regulatory agencies *of any* responsible party in a *similar situation*. Also note that DoD has the right to seek cost recovery or contribution from other parties for additional cleanup required for contamination determined not to have resulted from DoD operations.

Circumstance Under Which DoD Would Not Return to do Additional Cleanup. Where additional remedial action is required only to facilitate a use prohibited by deed restriction or other appropriate institutional control, DoD will neither perform nor pay for such additional remedial action. It is DoD's position that such additional remedial action is not "necessary" within the meaning of CERCLA Section 120(h)(3). Moreover, DoD's obligation to indemnify transferees of closing base property under Section 330 (of the Fiscal Year 1993 *Defense* Authorization Act) would not be applicable to any *claim* arising from any use of the property prohibited by an enforceable deed restriction or other appropriate institutional control.

Changes to Land Use Restrictions after Transfer. Deed restrictions or other institutional controls put in place to ensure the protectiveness of the remedy may need to be revised if a remedy has performed as expected and cleanup objectives have been meet. For example, the specified groundwater cleanup levels have been reached after a period of time. In such a case, the DoD Component disposing of the surplus property will initiate action to revise the deed restrictions or other institutional controls, as appropriate.

DoD will also work *cooperatively with any* transferee of property that is interested in revising or removing deed restrictions in order to facilitate a broader range of land uses. Before DoD could support revision or removal, however, the transferee would need to demonstrate to DoD and the regulators, through additional study and/or remedial action undertaken and paid for by the transferee, that a broader range of land uses maybe undertaken consistent with the continued protection of human health and the environment. The DoD Component, if appropriate, may require the transferee to provide a performance bond or other type of financial surety for ensuring the performance of the additional remedial action. The transferee will need to apply to the DoD Component disposal agent for revision or removal of deed restrictions or other institutional controls. Effective immediately, the process for requesting the removal of *such* restrictions by *a transferee should be* specified by the *disposal agent in the* documents transferring property from DoD.

Making those revisions or changes will be considered by DoD to be an amendment of the remedy decision document. Such an amendment will follow the NCP process and require the participation by DoD and regulatory agencies, as well as appropriate public input.

Disclosure by DoD on Using Future Land Use in Remedy Selection. A very important part of this policy is that the community be informed of DoD's intent to consider land use expectations in the remedy selection process. At a minimum, disclosure shall be made to the Restoration Advisory Board (or other similar community group), the LRA (if BRAC) or other local land use planning authority, and regulatory agencies. The disclosure to the community for a specific site shall clearly communicate the basis for the decision to consider land use, any institutional controls to be relied upon, and the finality of the remedy selection decision, including this policy. In addition, any public notification ordinarily made as part of the environmental restoration process shall include a full disclosure of the assumed land use used in developing the remedy selected.

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